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In the Supreme Court of the United States

OCTOBER TERM, 1980

JOAN FISCHER WRIGLEY,

Petitioner,

vs.

WILLIAM WRIGLEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE WISCONSIN COURT OF APPEALS

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QUESTIONS PRESENTED FOR REVIEW

Petitioner Joan Fischer Wrigley was married in 1953 and again in 1956. Both of those marriages were dissolved by divorce decrees entered by the courts of the State of Alabama in proceedings in which all spouses appeared and submitted to the jurisdiction of the Alabama courts. Petitioner then married respondent William Wrigley, who later commenced proceedings in Wisconsin to annul their marriage. The Wisconsin courts refused to extend full faith and credit to the Alabama decrees and annulled the marriage of petitioner and respondent.

1. Whether the refusal of the Wisconsin Court of Appeals to give full faith and credit to petitioner's two Alabama divorce decrees was in direct conflict with this Court's ruling in *Cook* v. *Cook*, 342 U.S. 126 (1951).

2. Whether the refusal of the Wisconsin Court of Appeals to look to the law of the rendering state to determine whether respondent had standing to challenge the divorce decrees was in direct conflict with this Court's ruling in *Johnson* v. *Muelberger*, 340 U.S. 581 (1951).

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OPINIONS BELOW

The unreported memorandum decision of the Circuit Court of Walworth County, Wisconsin appears in the Appendix at 1. The unreported opinion of the Wisconsin Court of Appeals appears in the Appendix at 17.

JURISDICTION

Petitioner seeks review of the order of the Wisconsin Court of Appeals, entered on October 27, 1980. The Wisconsin Supreme Court denied her Petition for Review of Adverse Decision on February 17, 1981. (App. 43.) This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. IV, § 1:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

28 U.S.C. § 1738:

> The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

Respondent William Wrigley commenced this lawsuit in the Circuit Court of Walworth County, Wisconsin in June, 1976, seeking to have his six-year marriage to petitioner Joan Fischer Wrigley annulled, or in the alternative, a

divorce. Mr. Wrigley's complaint alleged that Mrs. Wrigley's two prior divorce decrees, entered by the courts of the State of Alabama, were invalid, and that he was therefore entitled to have his marriage to her annulled because she had not been legally free to marry him.

Mrs. Wrigley filed a motion seeking summary judgment on Mr. Wrigley's claim of annulment. She submitted certified copies of the two Alabama divorce decrees and argued that full faith and credit required the court to grant her motion. The court denied the motion for summary judgment, and the case proceeded to trial, where the following facts relating to the two divorce decrees were established.

The Devine Marriage and Divorce

Joan Fischer Wrigley married Christopher Devine in 1953. The couple had resided in New Jersey, and one child was born to the marriage. Three years after their marriage, the Devines separated and decided to divorce.

Arthur Logan, an attorney and friend of both Joan and Devine, advised the couple to obtain the divorce in Alabama. He arranged to have local counsel, the firm of Malone and Malone, represent Joan, and he arranged to have another local attorney, William Sherrill, represent Devine. Joan traveled to Alabama and filed a complaint for divorce. (App. 44.) Devine filed an answer in the Alabama proceedings, acknowledging service of process, submitting himself to the court's jurisdiction, and waiving any further notice of the proceedings. (App. 46.) Mr. Sherrill also appeared on behalf of Devine. (App. 47.) In addition to the Complaint, and Answer, the Alabama records also include the deposition testimony of Joan Devine (App. 48-50), a docket sheet showing the Devine divorce (App. 51), and the decree itself. (App. 52.)

The Dexheimer Marriage and Divorce

Joan Fischer Wrigley married her second husband Richard Dexheimer in 1956, and they too resided in New Jersey. Three children were born to the Dexheimers. In 1966, ten years after their marriage, the couple decided to divorce. On the advice of Robert Friedlander, a lawyer and family friend, Joan went to Alabama to obtain the divorce. Mr. Friedlander arranged to have Talmadge Fambrough, another Alabama attorney, represent Joan in the proceedings.

Joan initiated the proceedings by filing a complaint for divorce. (App. 53.) Because Dexheimer chose not to contest the divorce, he contemporaneously filed an answer, in which he accepted service of process, submitted himself to the court's jurisdiction, contested the residency allegations of the complaint, and waived any further notice of the proceedings. (App. 55.) In addition to the complaint and answer, the Alabama records also include the deposition testimony of Joan Dexheimer (App. 57), and the divorce decree itself. (App. 60-62.)

The Wrigley Marriage

After her second divorce, Joan settled in New York where she worked and lived with two of her children. She began to see William Wrigley socially two years later. Joan and her two children moved to Chicago in October, 1969, and she and William were married the following year in Avalon, California.

After their marriage, the couple lived together as husband and wife for more than six years, spending weekdays in Chicago and traveling to Mr. Wrigley's Lake Geneva estate in Wisconsin on weekends. In 1976 friction arose between the two, and in June of that year Mr. Wrigley left

the marital home. A few days later he commenced the present action, asking the Circuit Court of Walworth County, Wisconsin, to annul his six-year marriage to Joan.[1]

Trial Court Proceedings

At the conclusion of the trial, the court issued a memorandum decision on November 21, 1978, granting Mr. Wrigley's complaint for annulment. The trial court found that Mrs. Wrigley's divorce from Dexheimer was not entitled to full faith and credit because she was not an Alabama resident at the time of the divorce and because Dexheimer did not "appear" in the proceedings. The court made no similar ruling with regard to the earlier Devine decree. The trial court further ruled that Mr. Wrigley had standing to challenge the Alabama decrees because their entry had adversely affected his right to marry a woman who was "free to marry."

Counsel for Mr. Wrigley thereafter filed proposed findings of fact and conclusions of law indicating that neither the Devine nor the Dexheimer decree were entitled to full faith and credit. Despite Mrs. Wrigley's objection that the court had failed to make any such findings in relation to the Devine decree, the trial court adopted Mr. Wrigley's findings and conclusions (App. 17), denied full faith and credit to both Alabama divorce decrees, and granted

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[1] Mrs. Wrigley initially entered a special appearance in the Walworth County Court, asserting that the Wisconsin court did not have personal jurisdiction over her because she was a resident of Illinois, and was never served with process in Wisconsin. The court held, however, that Mr. Wrigley was a resident of Wisconsin, and that, as his wife, Mrs. Wrigley's residence followed her husband's.

a judgment of annulment. (App. 1.) Final judgment was entered on October 23, 1979.[2]

The Wisconsin Court of Appeals

Mrs. Wrigley appealed the trial court's judgment to the Wisconsin Court of Appeals, arguing that the court had improperly refused to accord full faith and credit to the two Alabama decrees. The Wisconsin Court of Appeals, however, held that the two decrees were *ex parte*, that neither Mrs. Wrigley nor Devine nor Dexheimer had been domiciled in Alabama at the time the decrees were entered, and that therefore the decrees were not entitled to full faith and credit in Wisconsin. (App. 33.) Mrs. Wrigley petitioned the Wisconsin Supreme Court to review the decision of the Court of Appeals, but that petition was denied on February 17, 1981.[3] (App. 43.)

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[2] After the conclusion of the annulment trial, the parties participated in lengthy property restoration hearings. The court awarded certain personal property to each, and also found that Mrs. Wrigley should repay $38,000 to Mr. Wrigley to reimburse him for money spent for the education of one of Mrs. Wrigley's children from her first marriage. The final judgment entered on October 23, 1979, incorporated both the annulment decision and the property division.

[3] The Court of Appeals refused to hear oral argument and recommended that its opinion not be published. The Wisconsin Supreme Court denied leave to appeal even though the trial judge stated: "I haven't any doubt that the case will, sooner or later, end up in the [Wisconsin] Supreme Court." (January 7, 1980 Transcript of Proceedings at 13.)

REASONS FOR GRANTING THE WRIT

In a series of decisions rendered more than thirty years ago, this Court set down the principles governing the recognition of sister state divorce decrees by other state courts. *See Cook v. Cook*, 342 U.S. 126 (1951); *Johnson* v. *Muelberger*, 340 U.S. 581 (1951); *Sherrer* v. *Sherrer*, 334 U.S. 343 (1948); *Coe* v. *Coe*, 334 U.S. 378 (1948). These opinions affirmed that if the defendant has appeared and had an opportunity to contest jurisdiction, a divorce decree, like any other final judgment, is entitled to full faith and credit under the United States Constitution.

The decision of the Wisconsin Court of Appeals in *Wrigley* v. *Wrigley* is contrary to the rule of law set down in *Cook, Johnson, Sherrer* and *Coe*. The judgment of the Wisconsin Court of Appeals calls into question the validity of thousands of divorces obtained under circumstances virtually identical to those that culminated in the two Alabama decrees rejected by the Wisconsin court. The parties to all of those decrees relied upon this rule of law in dissolving their marital bonds, remarrying and raising families. Under the approach adopted by the court in *Wrigley*, parties to an uncontested divorce can never be certain of their legal status should they wish to remarry. Innocent persons unknowingly become bigamists and later-born children are bastardized by force of annulment proceedings in which they did not participate. Administration of estates can become a legal morass, as former spouses claim widow or widower's shares under decedents' estates. The stability and uniformity that this Court considered paramount in *Cook, Johnson, Sherrer* and *Coe* disintegrate into confusion and uncertainty.

The decision of the Wisconsin Court of Appeals permits these profound and disturbing results in derrogation of the most fundamental principles of standing. The Wisconsin judgment would permit a subsequent spouse to challenge

the jurisdictional bases of divorce decrees entered decades earlier at a time when he had no relationship with any of the parties to the proceedings. The Wisconsin judgment is an invitation to disenchanted spouses everywhere who seek an easy way to avoid their marital obligations.

The guarantees of the full faith and credit clause require that the Wisconsin judgment of annulment be reversed.

I. The Ruling Of The Wisconsin Court Of Appeals Is In Direct Conflict With This Court's Holding In Cook v. Cook Which Prohibits A State From Relitigation The Jurisdictional Facts Underlying Sister States' Decrees.

This Court has held time and again that if both parties to a divorce appear in the proceedings and have an opportunity to contest the court's jurisdiction, the resulting decree is entitled to full faith and credit in every state. *Sherrer* v. *Sherrer*, 334 U.S. 343, 355-56 (1948); *Coe* v. *Coe*, 334 U.S. 378, 384 (1948). This principle holds fast even if the jurisdictional allegations in the divorce proceeding were admittedly false. *Cook* v. *Cook*, 342 U.S. 126, 127 (1951).

In *Cook*, the husband brought suit in Vermont to annul his marriage to Mrs. Cook on the ground that her Florida divorce from her first husband was invalid. Mr. Cook alleged that because Mrs. Cook had not been a *bona fide* resident of Florida at the time of the divorce, the court had not had jurisdiction to grant the decree. The trial court found that Mrs. Cook had never intended to reside in Florida when she traveled there to obtain her divorce, that she had testified falsely concerning her residence, and that she "secured the Florida decree by deceiving the Florida court as to her domicile." *Id.* at 127. On the basis of these findings, the Vermont courts refused to grant full faith and credit to the Florida decree.

This Court reversed. It held that Vermont was required to give full faith and credit to the Florida decree, despite the fact that the Florida record did not even indicate whether Mrs. Cook's first husband had filed an appearance or participated in any way in the Florida divorce proceedings:

> If the defendant spouse appeared in the Florida proceedings and contested the issue of the wife's domicile (*Sherrer* v. *Sherrer*, 334 U.S. 343) or appeared and admitted her Florida domicile (*Coe* v. *Coe*, 334 U.S. 378) or was personally served in the divorce state (*Johnson* v. *Muelberger*, 340 U.S. 581, 587), he would be barred from attacking the decree collaterally; and so would a stranger to the Florida proceedings, such as respondent, unless Florida applies a less strict rule of *res judicata* to the second husband than it does to the first." *Id.* at 127-28.

The facts before the Wisconsin court in *Wrigley* v. *Wrigley* fall squarely within the holding of *Cook*. Devine, Joan's first husband, appeared generally and by counsel in the Alabama proceedings and himself signed a responsive pleading submitting to the jurisdiction of the Alabama court. Dexheimer also appeared generally, signed and filed an answer to the complaint, and submitted to the court's jurisdiction.

No one has ever challenged the authenticity of the documents filed on behalf of Devine and Dexheimer in Alabama. Indeed, both men have acknowledged that the pleadings, appearances, and waivers filed on their behalf were voluntarily and knowingly executed. Given the documented appearances of both Devine and Dexheimer in the Alabama proceedings and this Court's holding in *Cook*, neither they, nor strangers to those proceedings like Mr. Wrigley, are allowed to challenge the validity of the Alabama decrees.

In order to avoid having to give full faith and credit to the decrees, the Wisconsin Court of Appeals held that the two Alabama decrees were *ex parte*, rather than bi-

lateral.[4] (App. 33.) A holding that the decrees were *ex parte* allowed the court to reexamine the jurisdiction of the Alabama courts and make its own findings relating to the jurisdictional facts. *See Williams* v. *North Carolina*, 325 U.S. 226, 230 (1945).

The ruling of the Court of Appeals, however, ignored the fact that both Devine and Dexheimer appeared in the Alabama proceedings. When a party appears, due process is satisfied. *Cook* v. *Cook*, *supra* at 128. Due process requires only that the defendant have notice of the proceedings and an *opportunity* to be heard. How a party chooses to exercise that opportunity is a decision made by the party himself, and not by a court that, years later, decides to reexamine the underlying facts.

Only if the Alabama proceedings violated these minimal due process requirements can the resulting decree be called *ex parte*. And only if the decree is *ex parte* is a court allowed to reexamine the jurisdiction of the rendering state. The Wisconsin Court of Appeals attempted to distort the definition of an *ex parte* decree in order to circumvent those decisions that proscribe any reexamination of the jurisdictional facts upon which sister state decrees are founded.

The court reasoned that the decrees were *ex parte*, "[b]ecause there was no effective service of process, appearance by counsel, personal appearance by the defendant spouses or foreign state domicile. . . ." (App. 33.) That analysis cannot withstand scrutiny. A decree does not become *ex parte* because there is no proof of

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[4] The precise nature of the holding of the court is not clear. Although the court states unequivocally at one point that the Devine and Dexheimer decrees were *ex parte* (App. 33), the opinion later contradicts itself, saying: "In the case at hand it may be argued that Mr. Devine appeared, but this certainly does not apply to Mr. Dexheimer. . . ." (App. 32 n.5.) If Devine appeared in the proceedings, the decree is per force bilateral.

proper service of process. A party may be improperly served, but if he appears in the suit he is bound by its outcome. Nor does a decree become *ex parte* because there is no appearance of counsel on behalf of the defendant. If the rule were otherwise, a defendant could always defeat a lawsuit by refusing to hire an attorney. Nor does a decree become *ex parte* because there is no personal, in the sense of a physical, appearance by the defendant. Otherwise a defendant could always defeat a lawsuit by failing to present himself in open court.

Finally, the Wisconsin court cannot determine that there was no foreign state domicile and that the decrees were thereby rendered *ex parte* and not entitled to full faith and credit. This is nothing more than a back door way of doing what this Court has forbidden in *Sherrer* and *Coe*.

The Court of Appeals recognized that both Devine and Dexheimer entered appearances in the Alabama proceedings, but it ignored the effect of their appearances. "The purported 'waivers' signed by the two defendant spouses prior to the time of filing of the divorce complaints do not work to give the Alabama Court competent jurisdiction . . . ." (App. 33.)

This holding flies in the face of numerous decisions of this Court that have upheld the waiver of constitutional rights whenever made, if the waiver is knowingly and intelligently executed. In *D.H. Overmyer Co.* v. *Frick Co.*, 405 U.S. 174 (1972), for example, the defendant waived its right to prejudgment notice more than a year before any lawsuit was commenced. This Court ruled that the waiver, executed long before suit was initiated, did not result in any infirmity in the judgment entered against the defendant. *Id.* at 187. Therefore, even if the answers and waivers were executed by Devine and Dexheimer prior to the initiation of the lawsuit, that fact does not nullify their effect.

The opinions rendered in *Sherrer, Coe,* and *Johnson* reveal this Court's determination to prohibit state tribunals from reexamining jurisdictional facts in an attempt to evade the dictates of the full faith and credit clause. In *Cook,* this determination was reaffirmed in the face of findings that the jurisdictional allegations were false. Despite the obvious applicability of these Supreme Court decisions to this case, the Wisconsin Court of Appeals failed to discuss, distinguish, or cite any of them in support of its decision.

Undoubtedly, numerous spouses have waived notice and submitted the appropriate responsive pleadings simultaneously with the initial complaint for divorce, and numerous divorce decrees have been entered without the physical presence of one of the parties. The approach adopted by the Wisconsin court implicates the validity of those divorces and changes the legal status of the parties to the decrees, as well as the status of their current spouses and their children. The decisions below had just such an effect on the personal and legal status of Joan Wrigley, Christopher Devine, Richard Dexheimer, and the four children born to those marriages.

II. The Ruling of the Wisconsin Court Of Appeals Applying Wisconsin Law To Determine Whether William Wrigley Had Standing To Challenge The Alabama Decrees Was In Direct Conflict With This Court's Ruling in Johnson v. Muelberger.

The Wisconsin Court of Appeals' misunderstanding of the strictures imposed by the full faith and credit clause is further revealed by the court's treatment of the question of standing. In determining whether Mr. Wrigley had standing to attack the validity of the Alabama decrees, the Court of Appeals improperly examined Wisconsin law. (App. 34 n.4.) The question of standing to attack a sister state decree, however, must be determined by looking to the law of the rendering state, here Alabama.

In its opinion, the Court of Appeals stated that Mrs. Wrigley's contention that Mr. Wrigley lacked standing was "without merit. The Wisconsin Statutes plainly contemplate that a Wisconsin resident has a right to marry a spouse who is free to marry." *Id.*

This Court has ruled unequivocally that the Constitution itself mandates that the issue of standing be determined by the law of the rendering state, not by the law of the state being asked to give effect to the decree:

> When a divorce cannot be attacked for lack of jurisdiction by parties actually before the court or strangers in the rendering state, it cannot be attacked by them anywhere in the Union. The Full Faith and Credit Clause forbids.

Johnson v. *Muelberger*, 340 U.S. 581, 589 (1951). Rather than relying upon Wisconsin law, the Court should have examined Alabama law to determine whether Mr. Wrigley had standing to attack the decrees.

A review of Alabama law reveals that Mr. Wrigley has no standing to attack the decrees. The Alabama courts require that a party seeking collaterally to attack a decree must have had, at the time the decrees were entered, a pre-existing legal interest that was adversely affected by the entry of the decree. The Alabama Supreme Court has ruled on numerous occasions that parties in a position identical to that of Mr. Wrigley do not have standing to attack their spouses' earlier divorce decrees. *Weisner* v. *Weisner*, 282 Ala. 626, 628, 213 So. 2d 685, 686 (1968); *Aiello* v. *Aiello*, 272 Ala. 505, 510, 133 So. 2d 18, 22 (1961). *See also Yerger* v. *Cox*, 281 Ala. 1, 5, 198 So. 2d 282, 286 (1967). This limitation on standing properly prevents one party from taking unfair advantage of alleged infirmities that did not in any way touch or affect him.[5]

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[5] Mr. Wrigley attempted to fabricate a "harm" to his alleged right to marry a woman who was "free to marry." That argument is disingenuous. As one court has stated in response to a similar

(footnote continued)

The courts of several other states have applied the rulings of *Weisner*, *Aiello*, and *Yerger* to reject collateral attacks on Alabama divorce decrees made by subsequent spouses. *See Donner* v. *Donner*, 302 So. 2d 452 (Fla. App. 1974); *Kingdon* v. *Foster*, 238 Ga. 37, 230 S.E.2d 855 (1976), *cert. denied*, 431 U.S. 916 (1977); *Alikonis* v. *Alikonis*, 36 Ill. App. 3d 159, 343 N.E.2d 161 (4th Dist. 1976). All of these decisions were cited to the Wisconsin Court of Appeals, but not one was discussed, distinguished, or addressed in that court's opinion.

CONCLUSION

For all of the reasons and authorities set forth above, petitioner Joan Fischer Wrigley respectfully requests that this Court grant a writ of certiorari and reverse the decision of the Wisconsin Court of Appeals.

Respectfully submitted,

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(footnote continued)
attack by a later spouse to an Alabama decree: "But these adverse results [to plaintiff] would come, not from the Alabama decree, but from the plaintiff's attack on it. The plaintiff cannot create an adverse effect on her interests which would not otherwise exist, merely by attempting to raise an issue which she is without standing to raise. She cannot, by her own acts, confer on herself a standing, which she would not otherwise have to attack the Alabama decree." *Tippin* v. *Tippin*, 148 Conn. 1, 7, 166 A.2d 448, 451 (1960).

APPENDIX

STATE OF WISCONSIN: CIRCUIT COURT:
WALWORTH COUNTY: BRANCH I

WILLIAM WRIGLEY,

Plaintiff,

vs.

JOAN FISHER WRIGLEY,

Defendant.

FILE No. 76-18487

MEMORANDUM DECISION

This is an action for annulment of the marriage of the plaintiff and the defendant. The action is brought under Section 247.02, which provides: "No marriage shall be annuled or held void except pursuant to judicial proceedings. A marriage may be annuled for: (3) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party."

The defense in this case is that the defendant's prior divorces cannot be attacked in this Court because of the Full Faith and Credit provision of the United States Constitution. A determination of the issues in this suit requires a examination, not only of the facts surrounding the divorces in question, but also of the law in Wisconsin, Alabama and in the United States Supreme Court.

The Court will first address itself to the facts as disclosed in the testimony. It appears without question that the defendant was born and raised in New Jersey, and lived there continously until her marriage to Christopher J. Devine, Jr. on May 9, 1953 in South Orange, New Jersey. The Devines then lived in several places in New Jersey until they separated in the summer of 1954. At that time the defendant moved in with her parents, taking her infant son with her. In 1955 defendant and Devine resumed living together in East Orange, New Jersey, and were living in Deal, New Jersey when they finally separated in October, 1955. Defendant then moved in with her parents again in South Orange, New Jersey.

On November 16, 1955 the defendant filed a complaint for divorce in Limestone County, Alabama. Defendant admitted that she was a resident of New Jersey at least until October 21, 1955. When the defendant went to Alabama she was accompanied by her grandmother and she left her infant son in New Jersey. She and her grandmother stayed at a hotel. Her testimony on the trial was that she stayed there for two or three weeks. Other than going to Alabama and staying at the hotel, the defendant took no steps to establish a residence in Alabama. She did not bring her son to Alabama; she did not register to vote, nor establish any financial ties in Alabama. There is no evidence to indicate that she made an effort to acquire a home there either by purchase or rental. After the divorce she returned to New Jersey and resumed living there. As to how long she was in Alabama, it is difficult to say. She somewhat facetiously told Mr. Krieger that she was in Alabama long enough to get a cup of coffee. While she would obviously had to have been there longer than that, this Court is satisfied that she went to Alabama, got her divorce, and immediately returned to New Jersey.

An examination of the divorce papers in the Devine divorce show that the proceedings took place in Limestone County, Alabama. The complaint which is signed by her attorneys, Malone and Malone, alleged, "the complainant is a bona fide resident of Montgomery County, Alabama and respondent, Christopher J. Devine, Jr., is a non-resident of the State of Alabama and resides in New Jersey." It further alleges that the defendant and Mr. Devine lived together as man and wife until the 21st day of October, 1955, at which time they separated. Interestingly, it does not allege that she went to Alabama at that time.

Mr. Devine signed a paper, "Accepts service of a copy of the bill of complaint heretofore filed in said cause." It then says that, "for answer respondent admits the allegations as to the bona fide residence of the complaint in the State of Alabama," and other items. The respondent in said paper then waives notice of taking of testimony and waives notice of the submission of said cause for final decree. The evidence clearly establishes that this waiver and answer was signed by Mr. Devine prior to the filing of the papers in Alabama. It appears without question ney is listed as appearing for Mr. Devine, the undisputed within or without the State of Alabama. While an attorney is listed as appearing for Mr. Devine the undisputed testimony shows that this attorney was not employed by Mr. Devine, was not paid by him, and was not actually known to Mr. Devine. In fact, he had no contacts with this attorney, whatsoever.

As a portion of the papers filed in the Devine suit, a commission was issued to one Betty Sue Rester, a notary public in Montgomery County, Alabama, to take the deposition of the then Joan Devine. This deposition recites that Joan Devine was sworn and says "I am over twenty-one years of age and am a bona fide resident of

Montgomery County, Alabama." This testimony was sworn to before Betty Sue Rester. There is a divorce decree in the file dated November 18, 1955, which recites in part: "that the Court has jurisdiction of the parties and of the cause of action," and orders that the bonds of matrimony between the parties be dissolved. This is signed by a judge.

After the divorce Joan Devine returned to New Jersey, and then lived in New Jersey and New York until her marriage to Richard Dexheimer. The Dexheimers were married in Newark, New Jersey on May 26, 1956. A very interesting development then occurred. Mr. and Mrs. Dexheimer then went to Gadsen, Alabama where they went through another marriage ceremony before a probate judge on June 1, 1956. Both Mrs. Wrigley and Mr. Dexheimer testified that they went to Alabama for this second ceremony on the advise of their attorney. Mrs. Wrigley offered a further explanation that her parents didn't want her to travel with Mr. Dexheimer to Alabama in an unmarried state, and that that is the reason they were married first in New Jersey. Why they would want to be married by a probate judge in Alabama is a very interesting question. This Court is satisfied that they went to Alabama and went through a second marriage ceremony solely because Mrs. Wrigley's attorney or attorneys in New Jersey were concerned about the validity of the Devine divorce, and felt that it could in some way be shored-up by a marriage ceremony in Alabama. No other explanation makes any sense to this Court.

It is interesting that in the application for the New Jersey marriage license to Dexheimer, defendant stated that she had resided for eight years preceding in New Jersey. After the dual marriages the defendant and Dexheimer returned to New Jersey, living in numerous places

there until they separated in May of 1964. Even after the separation, defendant lived in New Jersey and according to her testimony continued to live there until immediately prior to the institution of the Dexheimer divorce.

In 1964 the defendant filed a suit in New Jersey against Dexheimer for separate maintenance and custody, and alleged that she resided in Deal, New Jersey. The Court entered a decree in that action awarding to Mr. Dexheimer the custody of the three children, and granting the defendant the right to amend her complaint to a complaint for divorce. No complaint for divorce was ever filed by the defendant in New Jersey, and that New Jersey case seems to be still an open file.

Before proceeding further with the facts relative to the parties, it should be pointed out that the leaders of the State Bar in Alabama, during the 1960's became concerned with "quickie divorce mills" that were operating in some of the rural counties in Alabama. One of these counties was St. Clair County, where Judge Whitten was the judge. Without detailing the steps taken in Alabama, it appears that an attorney by the name of Talmadge Frambrough, who represented the defendant, then Mrs. Dexheimer, in the Dexheimer divorce, was later suspended from practice because of his participation in these quickie divorces, and that one Donald McKay, an attorney in Alabama who apparently handled the contacts between Mrs. Wrigley's New Jersey attorney and Mr. Frambrough, was later disbarred and apparently is now operating some kind of a quickie divorce mill in Haiti.

Judge Whitten was eventually convicted of mail fraud in connection with his apparent sale of signed blank divorce decrees to one John Ike Griffith, an attorney in Alabama. It doesn't appear that defendant had any con-

tacts with Mr. Griffith and the evidence does not sustain the charge that the Dexheimer decree was one of these issued in blank to attorneys by Judge Whitten.

We now turn to an examination of the Dexheimer divorce. This followed in many respects the form of the Devine divorce. These papers were filed in St. Clair County, where, as indicated, Judge Whitten was the judge. The complaint as filed, which was signed by Mr. Frambrough as Mrs. Wrigley's attorney, alleged that the parties were married on June 2, 1956. This is particularly interesting because it alleged, although not quite accurately, the date of the Dexheimer marriage in Alabama and utterly ignores their marriage in New Jersey. The complaint then alleges that the complainant, "is a resident citizen of the State of Alabama and has been for more than one year next proceeding the filing of the bill of complaint." As in the Devine divorce, this allegation is a conclusion of law and does not recite any factual basis for it. In the next paragraph it alleges that respondent, Mr. Dexheimer, "did voluntarily abandon complainants bed and board while your complainant and respondent were domiciled in the State of Alabama." This is a obvious misstatement of the facts. Mr. Dexheimer was never domiciled in Alabama. Mrs. Wrigley testified on the stand that she called some of these errors to Mr. Frambrough's attention, but the complaint as shown in the papers filed in this Court does not show any correction thereof. And this Court, frankly, disbelieves Mrs. Wrigley's testimony on this point.

There is also, as part of the file, an acceptance of service, answer and waiver of respondent Dexheimer. Among other things it contains this statement, "Respondent specifically denies the allegation as to residency and demands strict proof thereof." Interestingly, as com

pared to the Devine waiver this one denies residency, whereas Devine admitted residency. Again, the evidence clearly establishes that Mr. Dexheimer was never served with any process from the State of Alabama, either within Alabama or outside thereof, and that the so called waiver was executed by him in New Jersey prior to the filing of the papers.

It is also interesting that the attorneys in Alabama were becoming far more careless as to the paper work by the time of the Dexheimer divorce than they had been at the time of the Devine divorce. There is no appearance by any attorney for Mr. Dexheimer, and the testimony shows, of course, that Mr. Dexheimer did not have an attorney in Alabama and had no contacts whatever with any attorney there. This carelessness is also shown in the testimony; so called testimony. The testimony was apparently taken before Ann W. Love, who was Judge Whitten's Clerk, with the portion thereof providing for a certification that the witness was sworn, is entirely blank. In this statement by the then Mrs. Dexheimer, she states among other things, "I am a bona fide resident citizen of the State of Alabama for the time required by law." Again we find no factual basis, but simply a conclusion of law. There is a correction, apparently written in by the defendant, correcting the age of Donna Lee. There is nothing to indicate any correction as to the allegation of residency. Again, there is a divorce decree signed by Judge Whitten, but there is no finding of residency set forth in the decree, although it had been denied in the so called answer. There is a typed-in item at the bottom of the decree which was apparently to be signed by Ann W. Love as Register, but this is unsigned. In 1976 Norman Smith, the present Register of that court, certified that he could not find any Dexheimer divorce papers and the exemplified copy on file in this

Court is dated September 7, 1978. The Court, of course, is aware of the fact that human error does occur, and it is possible that these papers were misplaced. However, in view of the testimony relative to the operation of the quickie divorce mills in Alabama, it seems far more probable that these papers were never filed in the Office of the Register until sometime subsequent to 1976.

We now turn to a consideration of the law involved in this case. The earliest pertinant Wisconsin case is *Davis* v. *Davis,* 259 Wis. 1. In that case the plaintiff brought an action to annul a divorce granted her husband in Wyoming. It appeared that the plaintiff never had a Wyoming domicile, and the trial court found that the defendant Davis did not have a Wyoming domicile and that the Wyoming court was without jurisdiction for that reason. The Supreme Court found that there were ample facts to support this finding, but then turned to the full faith and credit clause of the Constitution. Our Supreme Court referred to such cases as *Sherrer* v. *Sherrer* 334 United States 343; *Coe* v. *Coe* 344 United States 378 and *Johnson* v. *Muelberger* 340 United States 581. In the Davis Case the Court pointed out on page five, "The Court (United States) still holds, however, that where the defendant is not served with process in the state of forum and takes no part whatever in the proceeding, he or she is not concluded by the judgment and the state where the parties admittedly resided up to the time of the divorce is not required to extend faith and credit to the judgment under such circumstances." It appears that in the Davis Case the only action Mrs. Davis took was to enter a formal special appearance in Wyoming objecting to the jurisdiction because plaintiff lacked domicile. Our Court quoted with approval *Johnson* v. *Muelberger,* which stated in effect that a party is barred who has been personally served or who has entered a per-

sonal appearance. The Court held that Mrs. Davis did not personally appear. While there is some serious question as to whether Davis is still good law, it does indicate very strongly the unwillingness of our Supreme Court to extend full faith and credit where it is obvious that the law of the divorcing state was not only not complied with, but was blatantly violated.

The next Wisconsin Case is *Hartenstein* v. *Hartenstein* 18 Wis 2d, 509. In this case Mrs. Hartenstein had gone to Nevada and obtained a divorce from Mr. Hartenstein. Both parties were residents of Wisconsin at the time. Mrs. Hartenstein did reside in Nevada for six weeks prior to the divorce. That was all of the residence that was required under Nevada Law. The decree in Nevada recited that the husband appeared generally by his attorney. Again, the issue was one of full faith and credit. The Court said at page 511. "Where a divorce decree is obtained solely on constructive service, without any appearance by the defendant spouse and neither spouse is domiciled in the state granting the divorce at the time the suit is instituted, the decree is not entitled to full faith and credit." Citing *Williams* v. *North Carolina* 325 U.S. 226 and *Rice* v. *Rice* 336 U. S. 674, the Court also referred to the Sherrer, Coe and Johnson Cases which lay down the rule that where the absent spouse personally appears the decree is entitled to full faith and credit. The Court quotes with approval from the Sherrer Case as follows, "Those cases stand for the proposition that the requirements of full faith and credit bar a defendant from collaterally attacking a divorce decree on jurisdictional grounds in the courts of a sister state where there has been participation by the defendant in the divorce proceedings; where the defendant has been accorded a full opportunity to contest the jurisdictional issues and where the decree is not susceptible to

such collateral attack in the courts of the state which rendered the decree."

Our Supreme Court then proceeded to recognize the Nevada decree under the full faith and credit provision. While it is not referred to in the opinion, this Court cannot help but wonder if our Supreme Court was not partially induced to this conclusion by the feeling that Mrs. Hartenstein should not be given two kicks at the cat.

Defendant also points to the case of *Estate of Steffke* 65 Wis 2d 199. This is an interesting case because the attack on the divorce, which actually took place in Mexico, is not by either of the parties, but arises out of a question of the proper inheritance tax rate to be applied. The Court held that the tax rate as to strangers should be applied, rather than that as to relatives on the ground that the Mexican divorce was invalid in Wisconsin. The facts show that the parties again were Wisconsin residents, and that Mrs. Steffke went to Mexico and obtained a divorce and the husband appeared generally by an attorney appointed by him through power of attorney. He was never in Mexico. Our Supreme Court said that the full faith and credit clause of the Constitution did not apply to Mexico. The Court indicated that if it had been granted under similar circumstances in a sister state, full faith and credit would require that it be recognized. However, the Court pointed out that the divorce was technically bilateral, and that the Mexican Court had jurisdiction over both the parties. This is not true in the Dexheimer divorce, and probably was not true in the Devine divorce.

While not the law in Wisconsin at the time the case commenced, it is interesting that our legislature in 1977 amended Section 247.21, which relates to full faith and credit, to read, "Full faith and credit shall be given . . . to a judgment in any action affecting marriage . . . by a Court

of competent jurisdiction in another state . . . when both spouses appear or when the respondent has been personally served." In the case at hand it may be argued that Mr. Devine appeared, but this certainly does not apply to Mr. Dexheimer, who was not even represented by token counsel, and only signed a so called waiver, in which he denies residency. While, as indicated, this 1977 amendment has no force and effect in this case, it does very clearly indicate the position of our legislature on these issues.

We now turn to a consideration of the United States Supreme Court cases. As previously indicated, Sherrer, Coe and Johnson simply lay down the rule that where the absent spouse appears personally, or has been personally served, full faith and credit apply. This may require full faith and credit of the Devine divorce, but certainly does not in the Dexheimer case. In neither case, of course, was the husband personally served and this Court is satisfied that Mr. Dexheimer did not personally appear under the meaning of the law. In *Cook* v. *Cook* 342 United States 126, the Supreme Court dealing with a Florida divorce, said that it will be presumed that the court had jurisdiction over both parties, absent a showing to the contrary. This presumption, however, can be overcome and this Court is satisfied it has been overcome by the clear evidence in this case, especially as to Dexheimer.

In *Donnell* v. *Howell* 125 S.E. 2d 449, which was a quite similar North Carolina case, the wife who was not domiciled in Alabama went there for the purpose of obtaining a divorce. Her husband filed an answer and waiver admitting her allegation of residency. The North Carolina Court quoted at length from *Hartigan* v. *Hartigan* 272 Alabama 67, and determined that it did not have to give full faith and credit under either Sherrer or Coe because of the lack of participation of the husband.

The Hartigan case is very interesting. There the Alabama Court on its own motion set aside the divorce. Admittedly both parties in that case admitted their non-residency. In this case both Devine and Dexheimer admitted their non-residency, but Mrs. Wrigley has not technically made that admission, however all of the evidence in this case establishes without question that she was not a resident of Alabama at the time either of her divorces were granted and upon that showing this Court is of the opinion that an Alabama Court would set aside at least the Dexheimer divorce and probably the Devine divorce. Of interest along this line is the New Jersey case of *Guerieri* v. *Guerieri* 183 Atlantic 2d 499 and the New Jersey case of *Gerard* v. *Distefano* 202 Atlantic 2d 220.

In *Parish* v. *Parish* 271 NYC 2d 792 a New York Court allowed a stranger to an Alabama divorce to attack it in an annulment action, if he was unaware of the fraud perpetrated in the Alabama Court and acted with due diligence. That case is squarely in line with the case before this Court. The court in Parish referred to *Aiello* v. *Aiello* 272 Alabama 505, and said, "In order for such a collateral attack to lie in Alabama, the plaintiff must prove not only that the court was without jurisdiction to have granted the decree, but also that the second husband was unaware of this jurisdictional defect and that a fraud was practiced upon him by the wife in representing that she was in fact free to marry." In Parish it clearly appeared that Parish was aware of the fraud practiced in Alabama, and in fact took part in it, and therefore his action was dismissed. That isn't the situation here. There is no evidence in this case to show or even really to indicate that Mr. Wrigley was aware of the fraud practiced in Alabama by Mrs. Wrigley. In fact, he didn't even know Mrs. Wrigley at the time of the Dexheimer divorce.

Defendant relies principally upon the case of *Yerger* v. *Cox* 281 Alabama 1 and *Weisner* v. *Weisner* 282 Alabama 626. In Yerger the attack was by the children of Mr&Mrs Yerger and was based upon a divorce obtained by Mrs. Yerger from one Cox. The Alabama Court dismissed, first because the action was not timely—and incidently this would dispose of the problem—the Court also dismissed because plaintiff lacked standing to challenge the divorce decree because the decree did not impair any pre-existing right or legal status of any of the plaintiffs, and then indicated that a collateral challenge to an Alabama divorce could not be brought by one non-resident of Alabama against another. This Court does not believe that case applies because the decrees granted here did impair a pre-existing right or legal status of the plaintiff. That is his right to be married to a woman who was free to marry him at the time of the marriage. In the Weisner case the Court followed a somewhat similar rule, however, even in Weisner the Alabama Court permitted a challenge to a divorce that is void on its face, as in Aiello. This Court is satisfied that the Dexheimer divorce is void on its face for a number of reasons. One is the obviously false allegation of residency in the complaint; the obvious false allegation as to where the parties were married; the fact that the defendant's testimony was not sworn to, nor apparently taken in open court, and the fact that there was no finding as to residency in the decree. It is this Court's judgment that an Alabama court faced with all of these obvious points, wouldn't hesitate to set aside the Dexheimer decree. This Court does not believe, and cannot be convinced that the mere fact that a paper called a decree was signed by a judge, requires that full faith and credit be extended to that decree, even though it is as plaintiff's counsel indicated, accompanied by a bright gold seal. It

should be noted that unlike Yerger and Weisner, Mr. Wrigley is not bringing an action in Alabama to set aside these decrees. He is bringing an action in Wisconsin under Wisconsin Law for an annulment, and a judgment of annulment here will not in and of itself set aside the decree in either Devine or Dexheimer. Therefore, what an Alabama court might do to an action brought there is not material.

If the Court has not clearly spelled it out before, the Court finds that the defendant, Mrs. Wrigley, did not at any time acquire a residency or domicile in the State of Alabama, and down to this date has never been a resident of that State.

Defense counsel argues that the defendant was in effect an innocent victim of her own attorneys, and points out in this connection that she was twenty-two years of age at the time of the Devine divorce. How much knowledge she had at that time that she was involving herself in quickie divorces of questionable validity is unknown, but the Court is satisfied that by the time of the Dexheimer divorce she definitely knew the score. She was then thirty-three years of age and her knowledge of what was going on is clearly evidenced by her participation, first of all in the second marriage to Dexheimer in Alabama, and by the allegations in the complaint filed by Mr. Frambrough. Whether her complaint was drafted by Frambrough or Mr. McKay is hard to tell, but it contains obvious misstatements of fact as previously indicated in this opinion. Mr. McKay or Mr. Frambrough had to get these facts from someone, and since the defendant went to Alabama alone on the second occasion, it would be obvious that they were obtained from her. I particularly note the allegation as to when and where she was married and where she was separated. In addition, there is the testimony that Mrs. Wrigley gave

that at the time of the Dexheimer divorce she was considering the establishment of a branch office of her business either in Alabama or in the South. This was obviously a smoke screen intended to give some color of validity to the Dexheimer divorce. In any event, it is clear that she made no effort to establish a business in Alabama or anywhere in the South, and such contact as she claims she had, were surface contacts with somebody who worked for another company, and not contacts as a business person as astute as Mrs. Wrigley obviously is, would make prior to establishing a business.

There is one further item. Defendant claims that in any event the plaintiff is barred by laches or estoppel because of his knowledge of the facts. The evidence indicates that in 1969, when Mrs. Wrigley came to Chicago, she turned over certain papers to Mr. Wrigley for safekeeping. This apparently included the two divorce decrees. Assuming, although not proven, that Mr. Wrigley read over these papers at some time thereafter, there is nothing to indicate that from the papers themselves he would be alerted to the background or really the facts relative to those Alabama divorces. Neither does this Court believe, nor did Mrs. Wrigley testify that she told Mr. Wrigley anything that would indicate that her divorce decrees were invalid or even questionable, or that would alert him to an inquiry along that line. The Court is therefore satisfied that this action is not barred by laches or estoppel.

In the Hartenstein case our Supreme Court quoted from the case of *Staedler* v. *Staedler* 6 New Jersey 380, where the New Jersey Court said, "We don't believe that the full faith and credit clause of the Federal Constitution was ever intended to be used as a shield for or to give validity to the type of contract here under consideration, or to approve the acts performed pursuant thereto in cases

where the ultimate purpose was to commit a fraud upon the jurisdiction of a court of one of the sovereign states. Jurisdiction depends upon the existence of basic facts on a bona fide finding that the necessary facts actually existed, and where they don't exist, it cannot be conferred upon any court anywhere, by consent of the party or by fraud. It presupposes a bona fide examination by a court of competent jurisdiction of such facts before any judgment can be entered by such court." *Staedler* v. *Staedler* may or may not be good law today, but this Court is convinced that neither this Court nor any other court needs to extend the protection of full faith and credit to a situation such as is disclosed by the facts of this case.

To hold that the mere possession of two so called divorce decrees automatically, and without any investigation into the facts raises the shield of full faith and credit, would be make a mockery of the laws of both Wisconsin and Alabama, and this Court will not go that route.

This Court has therefore determined that there are ample facts to find the Dexheimer divorce void on its face and ample facts to sustain a finding by this Court that the plaintiff, William Wrigley, is entitled to have his marriage to Mrs. Joan Fischer Wrigley annulled, because she had at the time of that marriage a husband then living from whom she was not validly divorced.

DATED: November 21, 1978

BY THE COURT:

/s/ R. H. Gollmar
R. H. GOLLMAR—Circuit Judge

cc: Jenner & Block
Sidley & Austin

STATE OF WISCONSIN

CIRCUIT COURT: BR. I
WALWORTH COUNTY

WILLIAM WRIGLEY,

Plaintiff,

vs.

JOAN FISHER WRIGLEY,

Defendant.

File No. 76-18487

FINDINGS OF FACT and
CONCLUSIONS OF LAW.

The annulment issue in this case was tried by the Court, without a jury, and on November 21, 1978 the Court entered a Memorandum Decision in this matter. Plaintiff then filed with the Court proposed Findings of Fact and Conclusions of Law. Defendant filed objections to some of the Findings and Conclusions, and plaintiff then filed a Memorandum in Opposition to the defendant's objections.

The Court has considered all of the said matters, and does hereby make the following Findings of Fact and Conclusions of law.

FINDINGS OF FACT:

1. The Court has jurisdiction of the subject matter and of the parties.

2. Plaintiff is a resident of Wisconsin and has been since 1966.

3. Defendant was born in New Jersey on August 9, 1933. She was raised in New Jersey and lived in New Jersey continuously until she moved to New York in 1968. She has never been a resident of the State of Alabama.

4. Defendant married her first husband, Christopher J. Devine, Jr., on May 9, 1953 in South Orange, New Jersey.

5. After their marriage, defendant and Devine lived together in New Jersey. They separated in the summer of 1954, at which time defendant and her infant son moved in with her parents in Allenhurst, New Jersey.

6. Around Easter, in 1955, defendant and Devine resumed living together in East Orange, New Jersey, and then moved to Deal, New Jersey where they finally separarated in October, 1955.

7. Upon her second separation from Devine, defendant again moved in with her parents, who then lived in South Orange, New Jersey.

8. Defendant employed attorneys in New Jersey who prepared a separation agreement governing the custody and support of her infant son and who made arrangements for defendant to obtain a divorce in Alabama. The separaration agreement was dated November 11, 1955 and recited the residence of defendant in South Orange and of Devine in Deal, both in the State of New Jersey.

9. In the fall of 1955, defendant went to Montgomery, Alabama with her grandmother, for the sole purpose of getting a divorce from Devine, leaving her infant son behind in New Jersey. She and her grandmother stayed at a hotel in Montgomery, Alabama.

10. Defendant took no steps to establish a residence or domicile in Alabama in 1955; she did not bring her son to Alabama; she did not register to vote in Alabama; she did

not open any bank account, seek employment or establish any other financial ties in Alabama, and she did not acquire a home in Alabama, either by purchase or rental.

11. On November 16, 1955 defendant filed a complaint for divorce from Mr. Devine in Limestone County, Alabama. In the complaint she admitted that she had lived with Mr. Devine until October 21, 1955. Defendant lived with Mr. Devine until that date, in New Jersey.

12. On November 16, 1955 defendant filed in Limestone County Court in Equity an untitled paper, signed by Mr. Devine. This document recited that Devine "accepts service of a copy of the Bill of Complaint heretofore filed in said cause." The Court finds that no Bill of Complaint had been filed prior to the execution of this document by Mr. Devine. The document signed by Mr. Devine was prepared and signed in New Jersey. The name of one William Sherrill appears on the document as attorney for respondent (Mr. Devine).

13. Although an Alabama attorney, William F. Sherrill, is listed as appearing for Devine on the answer and waiver, this attorney was not employed by Devine, not paid by Devine and was not known to Devine. Devine had no contacts with this attorney whatsoever.

14. No process was served on Devine, either within or without the State of Alabama. Devine was never a resident of Alabama or present in the State of Alabama.

15. On November 17, 1955 the deposition of defendant was taken before Betty Sue Rester, a Commissioner and Notary Public in Montgomery, Alabama. This deposition was filed in the Limestone County Court in Equity on November 18, 1955 and on the same day the Limestone County Court in Equity entered a purported decree divorcing defendant and Devine.

16. No testimony was taken in court in connection with the Devine divorce.

17. Defendant returned to New Jersey immediately after the purported decree of divorce was entered and resumed living together with her parents and infant son in South Orange, New Jersey.

18. Defendant subsequently told Lawrence Krieger that she was in Alabama long enough to get a cup of coffee and admitted to him that she got an Alabama "quickie" di-divorce. The Court finds that the defendant was in Alabama for a longer period than she indicated to Mr. Krieger, but further finds that she was only there long enough to obtain the divorce.

19. Defendant did not acquire a residence or domicile in the State of Alabama in 1955.

20. On May 26, 1956 defendant married her second husband, Richard Dexheimer, in Newark, New Jersey. On the application for the marriage license the defendant stated that she had been a resident of New Jersey for eight years preceding the application. On the advise of defendant's counsel, defendant and Dexheimer then went to Alabama and on June 1, 1956 went through a second marriage ceremony in Gadsen, Alabama.

21. After the Alabama marriage ceremony, defendant and Dexheimer returned to New Jersey and lived together in numerous places in New Jersey until they separated in 1964. Defendant was a continuous resident in New Jersey after their separation.

22. In 1964, defendant filed suit in the Superior Court of New Jersey, Chancery Division, Monmouth County, against Dexheimer for separate maintenance and custody of the three Dexheimer children, and alleged that she resided in Deal, New Jersey.

23. On November 9, 1964, the Superior Court of New Jersey entered a decree awarding Dexheimer custody of the three children and granting defendant leave to amend her complaint for divorce. Defendant, however, never filed a complaint for divorce in New Jersey.

24. On March 9, 1966, while the New Jersey lawsuit was still pending, defendant filed a complaint for divorce against Dexheimer in St. Clair County, Alabama. On the same day a decree of divorce was entered.

25. The complaint for divorce falsely alleged that the Dexheimers were married on June 2, 1956 in Alabama and ignored their actual marriage in New Jersey on May 26, 1956. The complaint also falsely alleged that the defendant "is a resident citizen of the State of Alabama and has been for more than one year next proceeding the filing of the Bill of Complaint." It also falsely alleged that "on May 29, 1964, respondent, Dexheimer, without consent of your complainant, without sufficient reason therefor and without any intention of returning did voluntarily abandon complainant's bed and board while complainant and respondent were domiciled in the State of Alabama."

26. The Court finds the defendant was aware of the false allegations in her complaint and failed to call them to the attention of her Alabama attorney, and the Court is of the opinion that any information contained in the complaint must have been obtained by the attorney from the defendant.

27. Dexheimer was never served with process within or without the State of Alabama. Prior to the filing of the complaint in St. Clair County, he signed a so-called "Acceptance of Service, Answer and Waiver" in New Jersey in which he denied defendant's allegation of residency and demanded strict proof thereof. This document was also

filed on March 9, 1966. Dexheimer was never a resident of Alabama. He was not represented by counsel in Alabama. He was not present in Alabama at the time of the divorce.

28. There is, in the Dexheimer file, a deposition by the defendant which states it was taken before Ann W. Love, Judge Whitten's Register or Clerk. The portion of the fom providing for certification of the deposition on oral examination and the portion of the form providing for identification of any witness appearing before the Register and place of deposition, are entirely blank. The deposition was not sworn to.

29. On March 9, 1966, the same day the complaint, deposition, answer and waiver were filed, Judge French O. Whitten signed a decree of divorce. Although residence had been denied by Dexheimer in the paper called an answer, there was no finding of residency or jurisdiction over the parties or the subject matter in the divorce decree.

30. No testimony was taken in court in connection with the Dexheimer divorce.

31. Defendant took no steps to establish a residence or domicile in Alabama in 1966; she left her young son, Christopher, at her apartment in New Jersey with her housekeeper; she left her business, Fischer Chemical Company, headquartered in her apartment in New Jersey; all she took to Alabama were some of her clothes; she stayed at a hotel in Birmingham; she opened no bank accounts or charge accounts in Alabama; she did not register to vote in Alabama; and she did not acquire a home in Alabama, either by purchase or rental.

32. Defendant in 1966 made no effort to establish a business in Alabama or anywhere in the South. Any contacts which she had in Alabama in 1966 were only sur-

face contacts with somebody who worked for another company, and not contacts which a business person as astute as defendant is would make prior to establishing a business.

33. Defendant did not acquire a residence or domicile in Alabama in 1966.

34. In the 1960's the Alabama State Bar began investigating the quickie divorce mills operating in various rural counties, including St. Clair County, where defendant obtained her divorce from Dexheimer. As a result of the investigation, attorney Donald McKay, the attorney defendant consulted in Birmingham, was suspended from the practice of law for handling quickie divorces for nonresidents. While he was appealing his suspension, he was contacted by defendant and he arranged for her to be represented locally by Talmadge Fambrough, s St. Clair County attorney. McKay's suspension was affirmed by the Alabama Supreme Court in October, 1966. In 1967, Fambrough was charged by the Alabama State Bar with handling 206 quickie divorce cases, including the Dexheimer case. In 1968, he voluntarily relinquished his license to practice law and was suspended from the practice of law.

35. In 1970 French O. Whitten, Ann W. Love (Whitten's Clerk) and others were indicted for conspiring to use the mails to defraud by engaging to sell divorces to nonresidents of the State of Alabama. It was charged that the conspiracy commenced in August, 1965 and continued to the date of the indictment. Whitten pleaded guilty to the indictment and was sentenced to federal imprisonment.

36. In 1976, Norman Smith, the present Register (Clerk) of the Court certified that he could not find the Dexheimer divorce papers in the court records. The Register's certificate attests that he had made a diligent search of the court records.

37. Alabama Law in 1966 required the Register of the Court to report all divorces to the State Board of Health. The Dexheimer divorce was not reported to the State Board of Health.

38. Neither Mr. Devine nor Mr. Dexheimer were ever residents of Alabama. The defendant did not establish that she was an Alabama resident in either 1955 or 1966.

39. On March 26, 1970, plaintiff and defendant participated in a marriage ceremony in Avalon, California. No children were born to or adopted by plaintiff and defendant.

40. Defendant did not tell plaintiff anything which would indicate that either the Devine or Dexheimer decree was invalid or questionable, or which would alert him to make an inquiry as to their validity. Plaintiff had no reason to believe that either the Devine or Dexheimer divorce might be invalid. Plaintiff did not know defendant at the time of either the Devine or the Dexheimer divorce.

41. In February 1976 defendant sued plaintiff in the Circuit Court of Cook County, Illinois, charging him with fraud and deceit and seeking to set aside their antenuptial agreement.

42. On March 26, 1970 when defendant and plaintiff went through a marriage ceremony, both Dexheimer and Devine were living and both are still living and both are still unmarried.

CONCLUSIONS OF LAW:

1. The Limestone County Court in Equity did not have jurisdiction to grant a divorce to defendant and Devine because neither of them was a resident of the State of Alabama. Accordingly, the Devine divorce decree is a nullity.

2. The Circuit Court of St. Clair County, Alabama did not have jurisdiction to grant a divorce to defendant and Dexheimer because neither of them was a resident of the State of Alabama. Accordingly, the Dexheimer divorce decree is a nullity.

3. The Devine divorce decree is not entitled to full faith and credit because: A) Devine was not personally served in the State of Alabama; and B) Devine did not appear personally or through his own independent counsel in the divorce proceeding.

4. The Dexheimer divorce is not entitled to full faith and credit because: A) Mr. Dexheimer was not personally served either within or without the State of Alabama after the papers were filed and Mr. Dexheimer did not appear personally or through counsel in the divorce proceeding after the complaint was filed.

5. The Dexheimer divorce proceedings are void on their face because of: A) The false allegation of residency in the complaint; B) The false allegation in the complaint as to where the parties were married; C) The false allegation in the complaint that Dexheimer abandoned defendant's bed and board in the State of Alabama; D) The fact that defendant's testimony was not sworn to and her purported deposition was not taken in open court; and E) The failure of the court to make a finding of residency or jurisdiction in the decree even though Dexheimer's answer had put residency at issue.

6. The Dexheimer divorce proceedings are void on their face because the testimony of defendant and Dexheimer in this Court and the admissions of defendant adduced in evidence conclusively establish that neither defendant nor Dexheimer was a resident of the State of Alabama at the time of the divorce or at any other time.

7. The Devine divorce proceedings are void on their face because the testimony of defendant and Devine in

this Court and the admissions of defendant adduced in evidence conclusively establish that neither defendant nor Devine was a resident of the State of Alabama at the time of the divorce or at any other time.

8. Plaintiff had a pre-existing right or legal status, to-wit the right to be married to a woman who was free to marry him at the time of the marriage, which was impaired by the Dexheimer and Devine decrees.

9. Plaintiff has standing in an action in Wisconsin for annulment to challenge the validity of the prior Alabama divorce.

10. Plaintiff is not guilty of laches, estoppel or unclean hands.

11. At the time plaintiff and defendant contracted marriage, defendant had a husband then living, which husband is still alive.

12. Plaintiff is entitled to have his marriage to defendant annulled and declared void pursuant to Section 247.02, Wisconsin Stats.

13. Judgment of Annulment of the marriage between the parties is hereby granted. The Court reserves for later determination the restoration of property under Section 247.34, and such other matters as may be pending upon motions.

DATED AT ELKHORN, WISCONSIN, THIS 21st DAY OF December, 1978.

BY THE COURT:
/s/ R. H. Gollmar
R. H. Gollmar—Circuit Judge

copy to:
Jenner & Block
Sidley & Austin
Graves, Greenwald, Maier & Miner
Whyte & Hirschboeck

No. 79-1684

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT II

WILLIAM WRIGLEY,
Plaintiff-Respondent
and Cross-Appellant,

v.

JOAN FISCHER WRIGLEY,
Defendant-Appellant
and Cross-Respondent.

APPEAL from a judgment and orders of the circuit court for Walworth county: ROBERT H. GOLLMAR, Reserve Judge, presiding. *Affirmed.*

Before Voss, P.J., Brown and Scott, J.J.

VOSS, P.J. Joan Fischer Wrigley appeals from the trial court's judgment granting William Wrigley's complaint for annulment. The complaint was based upon the allegation that at the time he and Joan Wrigley were married, Joan had a prior spouse living from whom she was not divorced. During the course of this protracted litigation, the trial court also held that Joan Wrigley was not entitled to either compensation for her spousal services or to a sum greater than $24,000 for attorney fees. The trial court further declined to hold Joan Wrigley in contempt for her alleged failure to comply with an order of the court.

On appeal, Joan Fischer Wrigley raises the following issues: (1) whether the trial court erred in failing to extend full faith and credit to Mrs. Wrigley's Alabama divorce decrees; (2) whether under sec. 247.34, Stats. (1975), Joan Wrigley was entitled to compensation for the services she provided during her six-year marriage to William Wrigley, and (3) whether Joan Wrigley was entitled to a sum greater than $24,000 for attorney fees.

On cross-appeal, William Wrigley argues: (1) that the trial court erred in failing to hold Joan Wrigley in contempt for her failure to abide by the trial court's restraining order, and (2) that Mrs. Wrigley should be ordered to indemnify William Wrigley for attorney fees incurred due to Mrs. Wrigley's violation of the restraining order.

Mr. and Mrs. Wrigley were married on March 26, 1970 in Avalon, California. For a period of six years, they lived together as husband and wife. No children were born to or adopted by them. Mr. Wrigley did, however, support Mrs. Wrigley's two children born during her prior marriages. During this six-year period, the Wrigleys maintained two principal residences—a Chicago condominium occupied during weekdays and an estate in Lake Geneva, Wisconsin occupied on weekends.

During 1975, marital discord arose. One source of this marital friction was the legal effect of a premarital agreement entered into by the parties shortly before their wedding. In February of 1976, Mrs. Wrigley filed suit to set aside this agreement in the circuit court of Cook county, Illinois. Apparently, another source of such friction arose out of Mrs. Wrigley's allegation that Mr. Wrigley had begun to see other women.

On June 4, 1976, Mr. Wrigley filed a complaint to annul his marriage in the circuit court of Walworth county. In

support of his complaint, Mr. Wrigley alleged that at the time of the couple's marriage ceremony, Mrs. Wrigley had a prior husband living from whom she was not divorced.[1] In support of this assertion, the complaint alleged that Mrs. Wrigley had obtained two "quickie" divorces in Alabama from her two prior husbands and that both of the divorce decrees were void because none of the parties were residents of Alabama. Because of nonresidency, the complaint alleged that the Alabama courts lacked jurisdiction to dissolve the marriages, thus leaving Mrs. Wrigley not legally free to contract marriage with Mr. Wrigey.

THE APPEAL

A. Wisconsin's Recognition of the Alabama Courts' Divorce Decrees

Joan Wrigley married her first husband, Christopher J. Devine, Jr. on May 9, 1953 in the state of New Jersey. One child, Christopher, was born of the marriage. In October of 1955, Joan Wrigley and her first husband separated. Following the separation, Mrs. Wrigley moved in with her parents who are also residents of New Jersey. Mrs. Wrigley consulted attorneys in New Jersey who prepared a separation agreement which was signed by both Mrs. Wrigley and Mr. Devine. The agreement recited that both par-

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[1] Mr. Wrigley's cause of action was brought under sec. 247.02, Stats. (1975), which provides in pertinent part:

> No marriage shall be annulled or held void except pursuant to judicial proceedings. A marriage may be annulled for any of the following causes existing at the time of marriage:
>
> . . . .
>
> (3) When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

ties to the marriage were residents of New Jersey. A short time after entering into the separation agreement, Mr. Devine also signed an untitled document which recited that he "accepts service of a copy of the Bill of Complaint heretofore filed in said cause." The document further provided that "for answer respondent admits the allegations . . .;" specifically admitting that Joan was an Alabama resident. At the time this document was signed, no complaint had been filed, and no suit was pending in Alabama or anywhere else. Joan Wrigley then made arrangements to obtain a divorce in Alabama and traveled to that state for that sole purpose.

On November 16, 1955, Joan Wrigley filed a complaint for divorce in Limestone county, Alabama. Accompanying that document was the acknowledgment of service of process signed by Mr. Devine. An Alabama attorney, William F. Sherril, was listed as appearing for Devine on the answer and waiver signed by her first husband. This attorney was not employed by Devine, not paid by Devine and not known to Devine. Devine had never been in Alabama and had no contacts with this attorney whatsoever. On November 17, 1955, a deposition of Mrs. Wrigley was taken pursuant to her complaint for divorce. This deposition was filed with the court on November 18, 1955, and on that same day, the Alabama court entered a decree divorcing Mrs. Wrigley and Devine. No testimony was ever taken in open court. Mrs. Wrigley returned to New Jersey immediately after obtaining her divorce.

On May 26, 1956, defendant married her second husband, Richard Dexheimer, in Newark, New Jersey. On their marriage license application, Mrs. Wrigley stated that she had been a resident of New Jersey for the preceding eight years. In order to reinforce Mrs. Wrigley's Alabama di-

vorce decree, she and Mr. Dexheimer went through a second marriage ceremony in Gadston, Alabama on June 1, 1956. After the Alabama marriage ceremony, the couple returned to New Jersey and lived there until they separated in 1964.

On March 9, 1966, Mrs. Wrigley filed a complaint for divorce against Dexheimer in St. Claire county, Alabama. On that same day, the divorce decree was entered. The complaint for divorce alleged that the Dexheimers were married in Alabama, ignoring their prior marriage in New Jersey. The complaint falsely alleged that Mrs. Wrigley was a resident of Alabama and had been so for more than one year prior to the filing of the complaint. The complaint also falsely alleged the couple's domicile in Alabama. Prior to the filing of the complaint, Dexheimer signed an "Acceptance of Service, Answer and Waiver" in the state of New Jersey. In this document, he denied Mrs. Wrigley's allegation of Alabama residency and demanded strict proof thereof. This document was also filed with the complaint for divorce. Dexheimer was never a resident of Alabama nor was he represented by counsel in Alabama at the time of the divorce. Dexheimer was never served process within or without the state of Alabama. The complaint for divorce was supported solely by an unsworn deposition of Joan Wrigley. Immediately after obtaining her second Alabama divorce, Mrs. Wrigley again returned to New Jersey.[2]

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[2] The above recited facts concerning Mrs. Wrigley's Alabama divorce decrees were recognized as true in the trial court's findings of fact and conclusions of law. Such findings of the trial court and its decision thereon must be sustained unless they are against the great weight and clear preponderance of the evidence. *Ludke* v. *Egan*, 87 Wis.2d 221, 230, 274 N.W.2d 641, 645 (1979).

We believe that the question of whether a Wisconsin court must recognize Mrs. Wrigley's Alabama divorce decrees under the full faith and credit clause[3] (U.S. Const. art IV, § 1) is controlled by the case of *Hartenstein* v. *Hartenstein*, 18 Wis.2d 505, 118 N.W.2d 881 (1963). In that case, our supreme court declared:

> Where a divorce decree is obtained solely on constructive service, without any appearance by the defendant spouse, and neither spouse is domiciled in the state granting the divorce at the time the suit is instituted,

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[3] Section 247.21, Stats. (1975), reads in part as follows:

> Full faith and credit shall be given in all the courts of this state to a judgment of annulment of marriage, divorce or legal separation by a court of competent jurisdiction in another state, territory or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in s. 247.05.

Section 247.05, Stats. (1975), requires six months of residency in the forum state and thirty-day residency in the forum county prior to the filing of a divorce action as a precondition to jurisdiction.

While not the law in Wisconsin at the time the case was commenced, it is interesting that our legislature in 1977 amended sec. 247.21, Stats., to read:

> Full faith and credit shall be given . . . to a judgment in any action affecting marriage . . . by a court of competent jurisdiction in another state . . . when both spouses personally appear or when the respondent has been personally served.

Laws of 1977, ch. 105, §30.

In the case at hand it may be argued that Mr. Devine appeared, but this certainly does not apply to Mr. Dexheimer, who was not even represented by token counsel, and only signed a so-called waiver in which he denied residency. While, as indicated, this 1977 amendment has no force and effect in this case, it does very clearly indicate the position of our legislature on these issues.

the decree is not entitled to full faith and credit. *Williams* v. *North Carolina* (1945), 325 U.S. 226, 65 Sup. Ct. 1092, 89 L. Ed. 1577, 157 A.L.R. 1366, rehearing denied, 325 U.S. 895, 65 Sup. Ct. 1560, 89 L. Ed. 2006; *Rice* v. *Rice* (1949), 336 U.S. 674, 69 Sup. Ct. 751, 93 L. Ed. 957; Anno. 28 A.L.R.(2d) 1303, 1308; and Griswold, Divorce Jurisdiction and Recognition of Divorce Decrees, 65 Harvard Law Review (1951), 193, 216.

Id. at 511, 118 N.W.2d at 884-85. We believe that under *Hartenstein*, the Dexheimer and Devine *ex parte* proceedings are not entitled to full faith and credit.

The Alabama courts granting Mrs. Wrigley's divorce decrees never obtained competent jurisdiction over the parties. Neither Dexheimer nor Devine were personally served process. Although the papers filed in Alabama during the Devine divorce suggest that Mr. Devine was represented by counsel, Mr. Devine had not employed any counsel, met with any counsel nor heard of the counsel of record. Mr. Dexheimer testified that he had not appeared by counsel, and none of the papers filed pursuant to that divorce reflect such an appearance. The evidence is uncontroverted that none of the parties to either of the Alabama divorces were, at the time of the divorce or at any other time, in fact domiciled in Alabama. Because there was no effective service of process, appearance by counsel, personal appearance by the defendant spouses or forum state domicile, we conclude that the trial court was correct in not extending full faith and credit to Mrs. Wrigley's Alabama divorce decrees. The purported "waivers" signed by the two defendant spouses prior to the time of filing of the divorce complaints do not work to give the Alabama court competent jurisdiction when there is no forum domi-

cile, personal appearance, appearance by counsel or testimony in open court supporting the divorce decrees.[4]

B. Estoppel

Mrs. Joan Wrigley argues that Mr. Wrigley should be estopped from challenging the Alabama divorce decrees because of his failure to challenge them at an earlier date and because of his acceptance of Joan Wrigley as his wife for a period of six years. We do not agree with this argument.

The trial court found, based upon the evidence, that Mr. Wrigley had no knowledge of the invalidity of Mrs. Wrigley's Alabama divorce decrees. Because he had no knowledge of the defects in the divorce decrees, Mr. Wrigley should not be prejudiced for his failure to raise their invalidity at an earlier date.[5]

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[4] Mrs. Wrigley also argues that Mr. Wrigley is foreclosed from attacking her Alabama divorce decrees because, as a nonparty, he lacks standing. This contention is without merit. The Wisconsin Statutes plainly contemplate that a Wisconsin resident has a right to marry a spouse who is free to marry. *See* secs. 245.01 to 245.03, Stats. (1977), renumbered secs. 765.01 and 765.03, Stats., by Laws of 1979, ch. 32, §48. Moreover, our supreme court has permitted a stranger to attack a divorce decree. In the case of *Estate of Steffke*, 65 Wis.2d 199, 222 N.W.2d 628 (1974), the supreme court permitted a stranger, the Department of Revenue, to challenge an out-of-state divorce decree.

[5] The 1977 revision of the Wisconsin Statutes concerning annulment by our legislature aids this court in resolving the estoppel issue. Under sec. 247.03(4), Stats. 1977), annulment actions based upon marriages which are in violation of this state's laws must be brought within ten years. However, this limitation *does not* apply to where the marriage is prohibited because one of the spouses had another spouse living at the time of the marriage. Section

(footnote continued)

Moreover, the trial court was convinced by the evidence that Mrs. Wrigley knew that her Alabama divorce decrees were, at best, questionable. The fact that Mrs. Wrigley went through two wedding ceremonies with Mr. Dexheimer, one in New Jersey and one in Alabama, supports this conclusion. We believe that the trial court accurately categorized Mrs. Wrigley's state of mind when it stated that at the time of the Dexheimer divorce, Mrs. Wrigley "definitely knew the score."

The inapplicability of estoppel in a situation like this was squarely addressed in the case of *Estate of Gibson*, 7 Wis.2d 506, 512, 96 N.W.2d 859, 863 (1959), wherein the court stated:

> Acquiescence by silence by one who did not participate in securing the void divorce and who had grounds for believing such divorce was valid, which validity was likewise assumed by a third party marrying on the strength thereof and not relying on the acquiescence by silence, ought not to debar or estop the silent one from raising the question of the invalidity of the decree against such third party.

(footnote continued)

247.03(4), Stats. (1977), renumbered sec. 767.03(4), Stats., by Laws of 1979, ch. 32, §50, reads as follows:

> 247.03 Annulment. No marriage may be annulled or held void except pursuant to judicial proceedings. No marriage may be annulled after the death of either party to the marriage. A court may annul a marriage entered into under the following circumstances:
>
> . . . .
>
> (4) The marriage is prohibited by the laws of this state. Suit may be brought by either party within 10 years of the marriage, except that the 10-year limitation shall not apply where the marriage is prohibited because either party has another spouse living at the time of the marriage and the impediment has not been removed under s. 245.24.

The court further noted that:

> [T]o give rise to an estoppel by silence or inaction, there must be a right and an opportunity to speak and, in addition, an obligation or duty to do so.

Id. at 513, 96 N.W.2d at 863. Because of Mr. Wrigley's lack of knowledge, he never had the opportunity or duty to speak prior to the time he learned of the Alabama divorce decrees' defects. He, therefore, should not be estopped.

C. Compensation for Spousal Services

Mrs. Wrigley contends that the trial court erred in failing to award her sums of money as compensation for the spousal services she provided Mr. Wrigley during the six years they lived together as husband and wife. In dealing with this issue, the trial court specifically found that "any spousal services furnished by defendant to the plaintiff were minimal in value, and the value thereof, if any, was more than compensated by the gifts, payment of overdrafts, education of Donna and other items furnished by plaintiff to defendant." This finding of fact, of course, cannot be reversed unless it is contrary to the great weight and clear preponderance of the evidence. *Ludke* v. *Egan*, 87 Wis.2d 221, 230, 274 N.W.2d 641, 645 (1979).

This court is convinced that the trial court's finding is more than adequately supported by the evidence. Mrs. Wrigley stated under oath that during her marriage, she enjoyed one of the highest standards of living available in the United States. She received more than $150,000 per year in cash benefits from Mr. Wrigley. She was granted the full use of Mr. Wrigley's Lake Geneva estate and an apartment in Chicago. She was provided with a full staff of servants and, therefore, was not burdened with the

everyday domestic tasks or chores performed by the average wife.[6]

D. Sums of Money Allowed for Attorney Fees

Pursuant to sec. 247.23, Stats., Mrs. Wrigley's counsel (Jenner & Block of Chicago, Illinois and Graves, Greenwald, Maier & Miner of East Troy, Wisconsin) petitioned the trial court for an award of attorney fees and disbursements that had been incurred in defending Joan Wrigley against the annulment action brought by her husband. Her attorneys submitted time records and expenses to the trial court showing that it had incurred the astronomical sum of more than $230,000 in fees and expenses during the course of their representation of Mrs. Wrigley.

On June 1, 1977, the family court commissioner ordered Mr. Wrigley to pay $5,000 to Mrs. Wrigley's local counsel as a contribution to her attorney fees and to pay $4,000 for her accounting fees. On January 16, 1978, the trial court permitted Mrs. Wrigley to apply the $4,000 she had received for accounting fees to the cost of appealing a jurisdictional issue. On October 6, 1979, the trial court ordered an additional allowance of $10,000 to be paid to

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[6] By way of footnote, Mrs. Wrigley attacks the trial court's award of $38,000 to Mr. Wrigley for the sum he advanced Mrs. Wrigley for the education and support of her son Christopher. We find this attack unfounded. William Wrigley testified that he agreed to advance sums for the education, travel and medical care of Mrs. Wrigley's son, and she agreed to repay him. Pursuant to that agreement, more than $38,000 was paid by Mr. Wrigley for Christopher's expenses. Joan Wrigley's testimony in a prior proceeding corroborated Mr. Wrigley's testimony concerning the loan. Although at trial Mr. Wrigley denied the loan agreement, the court apparently believed Mr. Wrigley and held that Joan Wrigley should repay the loan. We believe that this finding is supported by the great weight and clear preponderance of the evidence, and, hence, it will not be upset.

Mrs. Wrigley's Chicago attorneys on her behalf. On that same date, the trial court also allowed $5,000 for suit money to bring about this appeal. The aggregate amount allowed to Mrs. Wrigley for her legal representation in this case amounted to $24,000. Mrs. Wrigley's attorneys submit that the amounts allowed by the trial court to pay Mrs. Wrigley's legal fees and disbursements was an abuse of discretion, and this court is asked to substantially increase the amount of these fees. We decline to do so.

The trial court would have committed an abuse of discretion if it had failed to consider "the estate of the parties, the number of hours spent on the case . . ., the complexity of the case, the client's ability to pay, and the results achieved . . .," during its determination of what sum would be a proper amount for an award of attorney fees. *Hennen* v. *Hennen*, 53 Wis.2d 600, 608, 193 N.W.2d 717, 721 (1972). The written decision of the trial court indicates, however, that all of these factors were adequately considered in fixing the attorney fees award at $24,000.

The record reflects that there was a great deal of duplication of effort on the part of the attorneys representing Mrs. Wrigley. In establishing the $24,000 figure, the trial court recognized this unnecessary duplication. The trial court found that the facts of this case were not complicated and that one competent trial attorney could have handled Mrs. Wrigley's defense. The record bears this out. The only witness called for the defense at the annulment trial was Mrs. Wrigley herself. The only witnesses called at the property trial were Mrs. Wrigley and her two children. Notwithstanding this simplicity, Mrs. Wrigley had no less than thirteen lawyers and five legal assistants working for her intermittently throughout the duration of this lawsuit. The trial court further noted that Mrs. Wrigley raised numerous issues which obviously

had little or no merit, hired both local and out-of-state counsel at considerable expense and began many lawsuits for the sole purpose of avoiding the jurisdiction of the Walworth County Circuit Court. The trial court correctly observed that Mrs. Wrigley is entitled to as many attorneys as are willing to work for her but that she is not entitled to contribution from Mr. Wrigley for greater legal representation than is necessary.

We believe that the trial court has carefully gone over all of the files and proceedings in this matter and has given full consideration to all of the factors concerning the determination of attorney fees set forth in the *Hennen* case. We, therefore, conclude that the trial court committed no abuse of discretion in awarding Mrs. Wrigley a fair and equitable contribution for attorney fees in this case.[7]

CROSS-APPEAL

William Wrigley filed his suit to annul his marriage on June 4, 1976. Mrs. Wrigley filed a special appearance in that suit challenging the jurisdiction of the Wisconsin court to adjudicate her marital status. On June 10, 1976, Mrs. Wrigley filed a suit for separate maintenance or, in the alternative, for divorce in the circuit court of Cook county, Illinois. On the same day that Mrs. Wrigley filed her complaint, the Illinois court entered an order enjoining Mr. Wrigley from "instituting or prosecuting in any jurisdiction other than the circuit court of Cook County, Illinois, any action affecting the marital status" of him-

[7] It appears that contrary to Mrs. Wrigley's suggestion, she was not required to hire Jenner & Block because her Wisconsin attorneys were being overpowered by William Wrigley's counsel. At the time Jenner filed its appearance, William Wrigley was represented only by two lawyers from Whyte & Hirschboeck in Wisconsin. Sidley & Austin did not file its appearance until July of 1978, more than six months after Jenner had appeared.

self or his wife Joan. On June 14, 1976, Mr. Wrigley requested the Wisconsin court to enter a similar restraining order against Mrs. Wrigley. In response to that request, the trial court issued a restraining order enjoining Mrs. Wrigley from "further prosecuting or maintaining in any respect the action for a divorce and/or separate maintenance which defendant has heretofore brought in Cook County, Illinois, or which she, or others on her behalf, may bring in Illinois or Wisconsin, or in any other jurisdiction."

On two separate occasions, Mr. Wrigley urged the trial court to find Mrs. Wrigley in contempt. On two separate occasions, the trial court declined to do so. We affirm the decision of the trial court.

The power of contempt exists to enable a court to enforce the fair and orderly administration of justice and to maintain such dignity and discipline as is essential to that end. *Bihlmire* v. *Hahn,* 31 Wis.2d 537, 543, 143 N.W.2d 433, 435 (1966), cert. denied 385 U.S. 970. Initiation of such proceedings is within the discretion of the trial court. *Bihlmire* v. *Hahn, supra.*

In declining Mr. Wrigley's request that his wife be held in contempt, the trial court noted that the restraining order should be limited in its effect to actions filed by Mrs. Wrigley attacking the jurisdiction of the Wisconsin court. The record reflects that the restraining order was intended to be of a temporary nature in effect only until such time that the question of jurisdiction and the issue of Mrs. Wrigley's special appearance in the suit was determined.[8] When the court entered its November 19, 1976

[8] Although the termination date of the order is disputed, we believe that the statements appearing in the record made by Judge Corbett clearly show that the restraining order was intended to terminate upon the determination of the jurisdictional issue.

order finding that it had jurisdiction, the restraining order enjoining Mrs. Wrigley from interfering with the jurisdiction of the Wisconsin court expired. The only lawsuit filed by Mrs. Wrigley between the time of the order and its expiration was the suit she filed for divorce on June 10, 1976.[9] We believe the trial court correctly held that the Illinois suit was not filed for the sole purpose of attacking Wisconsin jurisdiction.

Because Mrs. Wrigley appeared specially in the Wisconsin proceeding, she could not move the Walworth County Court to award her temporary support payments. At the time the suit for annulment was filed, Mrs. Wrigley was without any other source of income; she, therefore, petitioned the Illinois forum to order Mr. Wrigley to provide her with financial aid. The Illinois court awarded her $4,000 per month, such sum being awarded prior to the entry of any restraining order by the Wisconsin court. The fact that Mrs. Wrigley accepted the benefits of the Illinois court's order does not in any way render her in violation of the restraining order.

Furthermore, despite the claim that the Illinois suit violated the court's order, Mr. Wrigley actively participated in the lawsuit filed by Mrs. Wrigley in Illinois. At the time that lawsuit was filed, it was unsettled whether the Wrigley's marital status would be determined in Wisconsin or in Illinois. Indeed, both Illinois and Wisconsin courts entered orders enjoining proceedings in other jurisdictions.

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[9] Because we conclude that the restraining order terminated upon the determination of the jurisdictional issue on November 19, 1976, we need not consider whether the lawsuits filed or other legal action taken by Mrs. Wrigley after that date rendered her in violation of the court's order.

Despite Mr. Wrigley's attempts to restrain Mrs. Wrigley from proceeding in Illinois, he filed a motion to dismiss the action and a petition for change of venue in the Illinois suit.

In light of the limited restraining order issued by the Walworth County Circuit Court, we believe that court did not abuse its discretion in not finding Mrs. Wrigley in contempt. Because we agree that Mrs. Wrigley was not in contempt of court, we need not address the issue of indemnification for amounts of money expended by Mr. Wrigley defending against Mrs. Wrigley's allegedly contemptuous acts.

By the Court.—Judgment and orders affirmed.

Not recommended for publication in the official reports.

Office of the Clerk
SUPREME COURT
STATE OF WISCONSIN

Madison, February 17, 1981

TO Alice M. Bright
James J. Carroll
SIDLEY & AUSTIN
One First National Plaza
Chicago, Illinois 60603

Michael J. Rovell
Joseph G. Bisceglia
Gail A. Niemann
Donna Helen Triptow
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611

Victor M. Harding
WHYTE & HIRSCHBOECK, S.C.
2100 Marine Plaza
Milwaukee, WI 53202

The Court today announced an order in your case as follows:*

No. 79-1684 *Wrigley* v. *Wrigley*

A petition for review pursuant to sec. 808.10, Stats., having been filed on behalf of defendant-appellant-petitioner Joan Fischer Wrigley, and considered by the court,

IT IS ORDERED that the petition is denied, with $50 costs.

BEILFUSS, C.J., did not participate.

*

Thomas E. Greenwald
GRAVES, GREENWALD, MAIER & NEWTON
2137 Church St.
East Troy, WI 53120
Thomas J. Duffey
SCHELLINGER & DOYLE, S.c.
Suite 1350 Marine Plaza
111 East Wisconsin Ave.
Milwaukee, WI 53202

/s/ *Marilyn L. Graves*
Clerk of Supreme Court.

STATE OF ALABAMA)
) IN THE LIMESTONE COUNTY
LIMESTONE COUNTY) COURT, IN EQUITY.

JOAN DEVINE, Complainant

vs.

CHRISTOPHER J. DEVINE, JR., Respondent

TO THE HONORABLE D. L. ROSENAU, JR., JUDGE OF SAID COURT:

Now comes the Complainant, JOAN DEVINE, and exhibits this her Bill of Complaint against CHRISTOPHER J. DEVINE, JR., and respectfully represents unto the Court as follows:

1. The Complainant and Respondent are each over the age of 21 years. The Complainant is a bona fide resident of Montgomery County, Alabama, and the Respondent, CHRISTOPHER J. DEVINE, JR., is a non-resident of the State of Alabama and resides in Deal, New Jersey.

2. That the Complainant and the Respondent were lawfully married on May 9, 1953, in South Orange, New Jersey; and lived together as man and wife until the 21st day of October, 1955, at which time they separated and have had nothing to do with each other since that time and are now living separate and apart.

3. That there is one child the issue of said union; namely, CHRISTOPHER FRANK DEVINE, now going on 2 years of age.

4. The Complainant charges that the Respondent has been mean, cruel and unkind to her; that on or about the 21st day of October, 1955, and many times prior thereto, the Respondent did assault, beat, hit and strike the Complainant and did threaten her life; that Respondent has committed actual violence upon the person of Complainant, attended with danger to her life or health; the Complainant charges that, from the conduct of the Respondent toward her, there is reasonable apprehension that the Respondent will commit similar and other acts of violence upon her person, attended with danger to her life or health.

PREMISES CONSIDERED, Complainant prays that this Court will take jurisdiction of this cause and that the said CHRISTOPHER J. DEVINE, JR. be made a party respondent to said Bill of Complaint and that he be required to plead, answer or demur thereto within the time allowed for pleading and that, upon a final hearing of this cause, the Complainant be granted an absolute Divorce from the Respondent with the right to remarry; and Complainant prays for general relief.

/s/ *Malone & Malone*
Solicitors for Complainant

STATE OF ALABAMA)
) In the Limestone County
LIMESTONE COUNTY) Court, In Equity.

JOAN DEVINE, Complainant

vs.

CHRISTOPHER J. DEVINE, JR., Respondent

Now comes the Respondent, Christopher J. Devine, Jr., in the above-entitled cause and accepts service of a copy of the Bill of Complaint heretofore filed in said cause the same as if regularly served upon him in the mode and manner provided by Law, and acknowledges that he has received a copy of the Bill of Complaint in said cause.

For answer to the Bill of Complaint, and to each paragraph thereof, Respondent admits the allegations as to the names of the parties, the ages of the parties, the bona fide residence of the Complainant in the State of Alabama, the date and place of marriage of the parties, the date of the separation of the parties, that there was one child born of said marriage, and the other allegations of the Bill are denied.

The Respondent waives notice of the taking of testimony in said cause and agrees for the same to be taken at any time and place without further or other notice to him and consents for any Notary Public in and for the State of Alabama to be appointed by the Court to act as Commissioner to take the testimony of Complainant based on

oral interrogatories propounded to her in the various ways provided by Law.

Respondent further waives notice of the submission of said cause for final Decree and consents for same to be submitted at any time without additional notice to him.

Christopher J. Devine, Jr.

/s/ *Christopher J. Devine, Jr.*

Respondent in his own proper person

/s/ *William B. Sherrill*
Atty for Respondent

Witness:

/s/ *Arthur Logan*

/s/ *Sabina Truskowski*

THE STATE OF ALABAMA, LIMESTONE COUNTY

IN THE CIRCUIT COURT, IN EQUITY

JOAN DEVINE Complainant

Vs.

CHRISTOPHER J. DEVINE, JR. Respondent

To Betty Sue Rester, a Notary Public in and for Montgomery County, Alabama residing 1744 Crouson Street in the City of Montgomery, State of Alabama one or more to take the deposition:

Know Ye, That reposing confidence in your integrity, skill and ability, I have you Commissioner to take the depositions on oral examination of JOAN DEVINE a material witnesses for the Complainant in a cause now pending in the Circuit Court, in Equity, of said County, wherein JOAN DEVINE Complainant, and CHRISTOPHER J. DEVINE, JR. Respondent.

And hereby authorize you to call and cause to come before you the said witness at such time and place as you shall appoint, and her deposition on oath to take, touching her knowledge of the matter in controversy, and the said deposition when so taken by you shall be subscribed by said witness and certified under your hands and seals, and with this commission shall be returned to me.

Witness my hand, this the 16th day of November, 1955

/s/ John R. Coffman, Register

STATE OF ALABAMA)
)
) IN THE LIMESTONE COUNTY
) COURT, IN EQUITY.
LIMESTONE COUNTY)

JOAN DEVINE, Complainant

Vs.

CHRISTOPHER J. DEVINE, JR., Respondent

DEPOSITION OF JOAN DEVINE

By virtue of the Commission hereto annexed, issued from the Limestone County Court, in Equity, of Limestone County, Alabama, in a certain cause therein pending between JOAN DEVINE, Complainant, and CHRISTOPHER J. DEVINE, JR., Respondent, I, the Commissioner therein named, have called and caused to come before me the said JOAN DEVINE, the witness named in said Commission, on the 17th day of November, 1955, at Montgomery, Alabama, having first duly sworn the said witness to speak the truth, the whole truth, and nothing but the truth, the witness, JOAN DEVINE, deposeth and saith as follows:

My name is JOAN DEVINE. I am over 21 years of age and am a bona fide resident of Montgomery County, Alabama, and am the Complainant in this cause. The Respondent, CHRISTOPHER J. DEVINE, JR., is over 21 years of age, is a non-resident of the State of Alabama, and resides in Deal, New Jersey.

The Respondent and I were lawfully married in South Orange, New Jersey, on the 9th day of May, 1953, and lived together until, to-wit: the 21st day of October, 1955, at which time we separated and have not lived together since. There is one child the issue of said marriage, namely, CHRISTOPHER FRANK DEVINE, now going on 2

years of age. The Respondent has been mean, cruel and unkind to me. On or about the 21st day of October, 1955, and many times prior thereto, he did assault, beat, hit and strike me, and did threaten my life. He has committed actual violence upon my person, attended with danger to my life or health; that from his conduct toward me, there is reasonable apprehension that he will commit similar and other acts of violence upon my person, attended with danger to my life or health. I thereupon separated from him and have not lived with him since said separation, nor have I condoned his said acts of cruelty he made against my life.

/s/ *Joan Devine*
JOAN DEVINE

I, Betty Sue Rester, the undersigned Commissioner and Notary Public named in the Commission hereto attached, hereby certify that the foregoing testimony and answers in writing were taken down by me in the words of the witness, JOAN DEVINE, were read over to her and she assented, swore to, and subscribed the same in my presence at the time and place herein mentioned; that I have personal knowledge of the personal identity of the witness and that I am not of counsel or kin to any of the parties to this suit or in any manner interested in the results thereof. I enclose the deposition, with all papers issued to me in this case, to the Honorable John R. Coffman, Register of Limestone County Court, in Equity, at Athen, Alabama, whence the same emanated.

Given under my hand and seal, this the 17th day of November, 1955.

/s/ *Betty Sue Rester*
Commissioner And Notary Public
In the State of Alabama

THE STATE OF ALABAMA, LIMESTONE COUNTY
LIMESTONE COUNTY COURT, IN EQUITY

No. 1173

JOAN DEVINE

Complainant.

vs.

CHRISOPHER J. DEVINE, JR.

Respondent.

Complainant, being called, offers the following testimony, to-wit:

1st. Acceptance of Service of Process and Answer and Waiver of Respondent

2nd. Oral Deposition of Complainant

3rd. Bill of Complaint

Malone & Malone
Solicitor for Complainant.

Respondent, being called, offers the following testimony, to wit:

1st. Acceptance of Service of Process and Answer and Waiver of Respondent

2nd. General appearance of Hon. William Bruce Sherrill, Solicitor of Record for Respondent before the Court

I hereby certify that the above note of testimony is correct.

This 18 day of November, 1955.

/s/ *John R. Coffman,* Register

DIVORCE DECREE.

THE STATE OF ALABAMA, LIMESTONE COUNTY

JOAN DEVINE

NO. ..... VS.

CHRISTOPHER J. DEVINE, JR.

In The Limestone County Court in Equity.

This cause coming on to be heard at this term, was submitted upon Bill of Complaint, General Appearance of Respondent's Solicitor of Record before the Court, Acceptance of Service of Process and Answer and Waiver of Respondent, and testimony as shown by the note of submission, and upon consideration thereof, the Court is of opinion and finds that the Court has jurisdiction of the parties and of the cause of action, and that the complainant is entitled to the relief prayed for in her said Bill.

It is, therefore,

ORDERED, ADJUDGED AND DECREED BY THE COURT:

1. That the bonds of matrimony heretofore existing between the Complainant and Respondent be, and the same are hereby dissolved, and the said JOAN DEVINE is forever divorced from the said CHRISTOPHER J. DEVINE, JR.

2. That neither the Complainant nor the Respondent shall again marry, except to each other, until sixty days after the date of this decree of divorce.

3. That JOAN DEVINE the Complainant, pay the costs herein to be taxed, for which execution may issue.

Done this the 18th day of November, 1955.

/s/ D. L. Rosenau, Jr.

JOAN FISCHER DEXHEIMER

Complainant

VS.

RICHARD G. DEXHEIMER

Respondent

NO. 321A

In the Circuit Court of St. Clair County, Alabama
Southern Judicial Division at Pell City In Equity

TO THE HONORABLE F. O. WHITTEN, JR., JUDGE OF SAID COURT:

Comes the complainant, Joan Fischer Dexheimer, and respectfully represents and shows unto your Honor as follows:

I.

That your complainant and respondent were married to each other on June 2, 1956 and lived together as man and wife until May 29, 1964 at which time we separated and have not lived together since said date.

II.

That your complainant and respondent are over the age of eighteen years and complainant is a resident citizen of the State of Alabama and has been for more than one year next preceding the filing of the bill of complaint.

III.

On to-wit: May 29, 1964, respondent, without consent of your complainant, without sufficient reason therefor and without any intention of returning did voluntarily abandon complainant's bed and board while your complainant and respondent were domiciled in the State of Alabama; complainant further avers that the respondent made a final departure on this date and did nor request your complainant to accompany him but did abandon your complainant as aforesaid and your complainant and respondent have not lived together since said abandonment.

IV.

That the complainant and the respondent have executed an agreement pertaining to custody of the minor children which it is believed is to the best interest of the minor children and that the stipulation took place on January 20, 1966.

PREMISES CONSIDERED: Complainant prays that your Honor will take jurisdiction of this cause and that proper process issue out of this Court to the said Richard G. Dexheimer requiring him to appear before this Court within the time required by law and plead, answer or demur to this bill of complaint and that upon his failure to so plead, answer, or demur to this bill of complaint that a decree pro confesso be rendered against him; that upon a final consideration of this cause that this Honorable Court will make and enter a decree forever dissolving the bonds of matrimony now existing between complainant and respondent.

Complainant further prays that his Honorable Court will grant unto her such other, further and different relief, general or special, whether specifically prayed for or not, to which she may be entitled and for which your complainant will ever pray.

/s/ *Talmadge H. Fambrough*
Talmadge H. Fambrough
Solicitor for Complainant

JOAN FISCHER DEXHEIMER

Complainant

vs.

RICHARD G. DEXHEIMER

Respondent

In the Circuit Court of St. Clair County, Alabama, in Equity

Case No. .....

ACCEPTANCE OF SERVICE, ANSWER AND WAIVER OF RESPONDENT

Comes now the Respondent and accepts service of the Bill for Divorce as filed in this cause the same as if regularly served by process of this Court and submits generally to the jurisdiction of this Court.

For answer to the allegations of said Bill for Divorce Respondent says as follows:

1. Respondent admits the allegations contained therein as to age.
2. Respondent admits the allegations contained therein as to the existence of a marriage.
3. Respondent specifically denies the allegations as to residency and demands strict proof thereof.
4. Respondent specifically denies the allegations as to grounds for divorce and demands strict proof thereof.

Respondent waives notice as a condition precedent to the taking of testimony and specifically consents that testimony may be taken herein by affidavit or affidavits before a Notary Public or other officer authorized by law to administer oath, or by Commissioner duly appointed by the Register of this Court, as provided by the Code of Alabama, 1940, as amended, Title 7, Section 475.

And now having fully answered the allegations of the said Bill and having waived the manner of taking testimony in this cause, Respondent hereby consents for this cause to proceed and be submitted for final decree without further or other notice.

/s/ *Richard G. Dexheimer*
Respondent
as per existing appearance

Executed In The Presence Of:
/s/ *Hazel Fischer*
/s/ *Frank L. Fischer*

/s/ *Norman Smith*

THE STATE OF ALABAMA, ST. CLAIR COUNTY

IN CIRCUIT COURT IN EQUITY.

JOAN FISCHER DEXHEIMER

Complainant

vs.

RICHARD G. DEXHEIMER

Defendant

Oral examination before the Register of the following witnesses:

who reside in Alabama, said examination being conducted in ..... Alabama, on this the 9 day of March, and there being present Joan Fischer Dexheimer, Complainant herein.

The said ..... being first sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows: My name is Joan Fischer Dexheimer, I am the Complainant in this cause, I am over Eighteen years of age and am a bona fide resident citizen of the State of Alabama for the time required by law. The Respondent is named Richard G. Dexheimer and he is also over the age of eighteen. The Respondent and I were married on to wit: June 2, 1956 in Gadsden, Alabama and separated on to wit: May 29, 1964 and have not lived together as husband and wife since said separation date. There were three children born of this marriage, Peter Jacob, age 8, Frank Fischer, age 7 and Donna Lee, age 8 ~~months~~. (*5 years JFD*) That the complainant and the Respondent have executed an agreement pertaining to custody of the minor children which it is believed is to the best interest of the minor children and that the stipulation took place on January 20, 1966. Complainant and Respondent have agreed on said date that custody of Peter Jacob and Frank Fischer, sons of this marriage

should be with the Respondent father and that custody of the daughter Donna Lee should be with the mother-complainant. Your Complainant therefore requests that should Your Honor see fit to grant Complainant a decree of Divorce, that Your Honor will grant custody as agreed above and direct the parties to abide by the terms of there agreement of January 20, 1966. Your complainant avers that the Respondent did on to wit: May 29, 1964 abandon your complainant with out cause and with out the fault of the complainant and that they have not lived together as husband and wife since said date a period of over one and one half year ago. Your Complainant therefore prays that she be granted a decree of divorce from the respondent.

/s/ Joan Fischer Dexheimer
Joan Fischer Dexheimer, Complainant.
/s/ Norman Smith

I, ..., as .....
hereby certify that the foregoing deposition ..... on oral examination ..... taken down by me in writing in the words of the witness.... and read over to ..... and..... signed the same in the presence of .....,
at the time and place herein mentioned; that I have personal knowledge of the personal identity of the said witness....., or had proof made before me of the identity of said witness....; that I am not of counsel or of kin to any of the parties to said cause; or in any manner interested in the result thereof.

I enclose the said Oral Examination in an envelope to the Register of said Court, and placed the same on file in my office.

Given under my hand and seal this the 9 day of March, 1966.

/s/ Ann W. Love (L.S.)

WITNESS FEES.

I hereby certify that the following named witnesses are entitled to the amounts stated below:

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

....days' attendance at $1.50 per day .... $.....

REGISTER'S FEES.

..... days at $1.50 per day.....$.....

..... words at 20 cents per hundred.....$.....

No. 321A

ST. CLAIR COUNTY

THE STATE OF ALABAMA

IN CIRCUIT COURT, IN EQUITY

JOAN FISCHER DEXHEIMER

Complainant,

vs.

RICHARD G. DEXHEIMER

Respondent.

DIVORCE DECREE

(Filed Mar 9 1966)

ST. CLAIR COUNTY

Ann W. Love

REGISTER

THE STATE OF ALABAMA, ST. CLAIR COUNTY

CIRCUIT COURT, IN EQUITY

JOAN FISCHER DEXHEIMER Complainant

vs.

RICHARD G. DEXHEIMER Respondent

This cause coming on to be heard was submitted upon Bill of Complaint, Answer and Waiver of the Respondent and Testimony as noted by the Register, and upon consideration thereof, the Court is of the opinion that the Complainant is entitled to the relief prayed for in said bill.

It is therefore ordered, adjudged and decreed by the Court that the bonds of matrimony heretofore existing between the Complainant and Defendant be, and the same are hereby dissolved, and that the said Joan Fischer Dexheimer is forever divorced from the said Richard G. Dexheimer.

It is further ordered, adjudged and decreed that neither party to this suit shall again marry except to each other until sixty days after the rendition of this decree, and that if appeal is taken within sixty days neither party shall again marry except to each other during the pendency of said appeal.

It is further ordered, that both parties be, and they are hereby permitted to again contract marriage upon the payment of the cost of this suit.

It is further ordered that Joan Fischer Dexheimer the complainant pay the cost herein to be taxed, for which execution may issue.

This 9 day of March, 1966

Seal of Circuit Court, St. Clair County, Ala.

/s/ *F. O. Whitten, Jr.*

Judge Circuit Court, in Equity

Ann W. Love, Register

In the Circuit Court for St. Clair County, Alabama, I hereby certify that the foregoing is a correct copy of the original decree rendered by the Judge of the Circuit Court in the above entitled cause, which said decree is on file and enrolled in my office, the cost has been paid.

Witness my hand and seal this the .....

day of ....., 1966.

.....

Register of Circuit Court, in Equity.

Office-Supreme Court, U.S.
FILED
JUN 17 1981
ALEXANDER L. STEVAS,

No. 80-1948

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOAN FISCHER WRIGLEY,

Petitioner,

vs.

WILLIAM WRIGLEY,

Respondent.

On Petition For Writ of Certiorari To The Wisconsin Court of Appeals

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

ALICE M. BRIGHT
JAMES J. CARROLL
DAVID W. CARPENTER
SIDLEY & AUSTIN
One First National Plaza
Chicago, Illinois 60603
(312) 329-5400

June 17, 1981

Attorneys for Respondent

QUESTIONS RESTATED

1. Are the Wisconsin courts required to give full faith and credit to Alabama divorce decrees where the decrees are null and void and entitled to no credit at all under Alabama law and where Alabama law gives spouses, like respondent, standing to raise the invalidity of such divorce decrees in suits to annul a subsequent marriage?

2. Are the Wisconsin courts required to extend full faith and credit to divorce decrees rendered by Alabama courts in sham, *ex parte* proceedings in which the defendant spouses did not participate, in which the jurisdictional fact of domicile was placed in issue but never even adjudicated, and in which all concede the Alabama courts lacked jurisdiction?

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No. 80-1948

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOAN FISCHER WRIGLEY,

Petitioner,

vs.

WILLIAM WRIGLEY,

Respondent.

On Petition For Writ of Certiorari To The Wisconsin Court of Appeals

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI

STATEMENT OF THE CASE

Petitioner Joan Fischer Wrigley seeks review of a decision of the state courts of Wisconsin that annulled the marriage between petitioner and respondent William Wrigley. This decision is based on the application of the law of Alabama and established federal principles to a set of unique facts. Because the Petition misstates critical facts and ignores the findings of the Wisconsin courts, a brief restatement of the facts is necessary.

The Devine Marriage and Divorce. Petitioner married Christopher Devine in New Jersey in 1953. In October, 1955, while

residing in New Jersey, petitioner consulted a New Jersey attorney, Arthur Logan, about the best way out of this marriage.[1] This attorney recommended an Alabama divorce (Tr. 127-28).

On November 14, 1955, Devine signed an untitled document which stated that he "accepts service of a copy of the Bill of Complaint heretofore filed" and admitted that petitioner was an Alabama resident (Tr. 60-61). At the time Devine signed this paper—which the Petition (p. 3) erroneously describes as an "answer"—no complaint had been filed and no suit was pending in Alabama or anywhere else (App. 19, Finding 13).

Petitioner and her grandmother went to Montgomery, Alabama shortly after Devine signed the untitled document. On November 16, 1955, petitioner filed a complaint for divorce in the rural Limestone County Court, alleging that she was a resident of Montgomery County, Alabama (App. 19, Finding 11). Devine testified in the Wisconsin court that he has never been in Alabama (Tr. 61-62), and he was not served with process in the Alabama proceeding, either within or without the State of Alabama (App. 19, Finding 14). Contrary to the Petition's misstatement (p. 3), Devine did not file any papers in this proceeding. As the Wisconsin court found, *petitioner* filed the untitled document which Devine had previously signed (App. 19, Finding 12). Before she filed this document, petitioner "designated" an attorney, William Sherrill, as "counsel" for Devine (Tr. 129). Contrary to the Petition's claim (p. 3) that Sherrill represented Devine, the Wisconsin court found that Devine had never met or employed Sherrill and that Sherrill was not Devine's attorney (App. 19, Findings 12 and 13).

On November 18, 1955, a "deposition" of petitioner was filed in the Limestone County Court. On the same day (which was two days after the complaint was filed), the court, without a hearing

[1]Contrary to the Petition's suggestion (p. 3), Logan never represented Devine.

or any testimony, entered a decree purporting to grant a divorce (App. 19-20, Findings 15 and 16).

Petitioner had taken no steps to establish residence in Alabama (App. 18, Findings 9 and 10). She admitted at trial that her only purpose in going to Alabama was to get a "no-publicity" divorce and that she returned to New Jersey immediately after the decree was entered (Tr. 833). Years later, she bragged that she was in Alabama just long enough to get a cup of coffee (App. 20, Findings 17 and 18).

The Dexheimer Marriages and Divorce. On May 26, 1956, five months after the Devine divorce, petitioner married Richard Dexheimer in New Jersey. On the marriage application, petitioner did not answer the question which asked whether she was legally free to marry (PX 6). On advice of her counsel, she and Dexheimer then went to Alabama and went through a second marriage ceremony there on June 1, 1956, six days after her actual marriage (Tr. 16, 177). The sole reason for this second marriage ceremony was that petitioner was aware that her Alabama divorce was of questionable validity, but believed that a marriage ceremony in Alabama might somehow shore up the Devine divorce (App. 4).

After the Alabama marriage ceremony, petitioner and Dexheimer returned to New Jersey. They had three children. In 1964, petitioner left Dexheimer. Although a New Jersey court subsequently granted petitioner leave to file a complaint for divorce in New Jersey[2] and although petitioner then knew her first Alabama "quickie" divorce was of doubtful validity (App. 14),

[2]In July of 1964, petitioner had filed a complaint for separate maintenance and child custody in a New Jersey court. Dexheimer filed an answer charging that she had committed adultery with a number of men and had squandered his money (PX 5). On November 9, 1964, the New Jersey court awarded Dexheimer custody of their three children and granted petitioner leave to file for divorce.

petitioner decided to obtain a second Alabama divorce in order to avoid adverse publicity (App. 20-21, Findings 21-24).

On March 9, 1966, petitioner used two Alabama attorneys, Donald McKay[3] and Talmadge Fambrough, to file a complaint for divorce against Dexheimer in St. Clair County, Alabama (App. 23, Finding 34). The complaint ignored their actual marriage in New Jersey on May 26, 1956, and alleged that the Dexheimers were married on June 2, 1956, in Alabama. The complaint also alleged that petitioner had been a "resident citizen" of Alabama for more than one year and that Dexheimer abandoned her "bed and board while complainant and respondent were domiciled in the State of Alabama." The Wisconsin courts found that petitioner was, at the time the complaint was filed, fully aware that each of these allegations was false (App. 21, Findings 25 and 26).

Dexheimer testified in the Wisconsin court that he had never resided in Alabama (Tr. 35, 40-41), and he was not served with process in this "case," either within or without the State of Alabama (App. 21-22, Finding 27). Prior to the filing of the complaint, he had signed a so-called "Acceptance of Service, Answer and Waiver" in New Jersey, which petitioner later filed in the Alabama court.[4] Unlike Devine, who admitted the false allegation of Alabama residence in his untitled paper, Dexheimer denied petitioner's allegation of residence and demanded strict proof. Petitioner did not "designate" counsel for Dexheimer, and Dexheimer did not appear in the proceeding or, contrary to the Petition's assertion (p. 4), "file any papers" (App. 21-22, Finding 27).

---

[3]Donald McKay was at that time suspended from the practice of law in Alabama because of his participation in the sale of quickie divorces to nonresidents, but was appealing his suspension.

[4]Contrary to petitioner's assertion (Pet. p. 4), Dexheimer did not "file" the paper he signed. Because Dexheimer was not in Alabama and was not represented by even token Alabama counsel, it is obvious that all the papers were filed by petitioner's counsel.

On March 9, 1966, the complaint, the paper signed by Dexheimer, and a "deposition" were filed in the St. Clair County Court. This "deposition" was not sworn to, and those portions of the form providing for certification on oral examination, identification of the witness and the place of deposition are entirely blank (App. 22, Findings 28 and 30). That same day, Judge French O. Whitten of the St. Clair County Court signed a decree purporting to dissolve petitioner's Alabama marriage to Dexheimer. Although Dexheimer's paper had denied that either party was domiciled in Alabama and demanded strict proof, no testimony was taken in court, no hearing occurred, and the decree made no finding of residence or jurisdiction over the subject matter (App. 22, Finding 29).

The St. Clair County Divorce Mill. The uncontroverted evidence at trial showed that Judge Whitten had operated a corrupt divorce mill in St. Clair County, Alabama from 1965, when he was elected, to 1970, when he was removed from office. It had been Judge Whitten's practice to sign any decree that attorney Fambrough prepared for him. Judge Whitten never made any inquiries into domicile or even purported to follow judicial procedures, delegating this power to attorney Fambrough. Judge Whitten accommodated lawyers by meeting them 24 hours a day, signing papers anytime and anywhere—including lounges, bars, and highways (Tr. 422-27; DX 3).

Whitten and Fambrough were thereafter investigated for their roles in the sale of quickie divorces to nonresidents of Alabama (App. 23, Findings 34 & 35; PX 15). In 1968, Fambrough was suspended from the practice of law, the Dexheimer case having been specifically cited as one of the grounds for his suspension (PX 62). In 1970, Judge Whitten was convicted of mail fraud for his sales of divorces to nonresidents of Alabama and was sentenced to federal prison (App. 23, Finding 35).

The Wisconsin courts found that petitioner Joan Wrigley "definitely" knew that these Alabama divorces were shams and of

questionable validity *before* her Dexheimer divorce in 1966 (App. 14-15, 34-35). The Wisconsin courts further found that respondent Wrigley had neither known nor had reason to know of the invalidity of petitioner's prior divorces until shortly before he filed his annulment complaint (App. 15, 34).

The Wisconsin Court Proceedings. On June 4, 1976, respondent William Wrigley filed a complaint to annul his marriage to petitioner in the Circuit Court of Walworth County, Wisconsin, where the parties both resided.[5] He brought this complaint under a Wisconsin statute (Wis. Stat. §247.02(3) (1976 Stat.)) which authorizes Wisconsin courts to grant annulments if a spouse has a prior husband living from whom she is not divorced.[6] On the basis of the foregoing facts, the Circuit Court of Walworth County held that neither the Devine divorce nor the Dexheimer divorce are entitled to full faith and credit in a suit for an annulment and that respondent Wrigley has a right to have his marriage to petitioner annulled. The Court issued an opinion on November 21, 1978 and entered its Findings and Judgment of Annulment on December 21, 1978.

The Circuit Court's decision was based on a painstaking analysis of the law of Alabama (App. 11-14) and of the principles under the Full Faith and Credit Clause (App. 8-11) and on the court's careful application of the law to the specific facts of this case.

The Circuit Court held that respondent had standing under Alabama law to raise the invalidity of petitioner's two prior Alabama divorces in an annulment proceeding and that, because

[5]Both the Circuit Court of Walworth County, Wisconsin, and the Circuit Court of Cook County, Illinois, have ruled that petitioner and respondent were each then Wisconsin residents.

[6]After the present case was filed, petitioner brought three separate suits for divorce in the Circuit Court of Cook County, Illinois, and one suit for divorce in the United States District Court for the Northern District of Illinois. She also counterclaimed for divorce in the Circuit Court of Walworth County, Wisconsin.

respondent was unaware of the fraud petitioner had perpetrated, the marriage between petitioner and respondent could be annulled if *either* prior Alabama divorce was void (App. 11-14). Applying Alabama law, the court found, first, that there were five separate reasons why the Dexheimer decree was "void on the face of the record" under Alabama law (App. 13; App. 25, Conclusions of Law 5 and 6):

> (1) the fact there was a jurisdictional defect on the face of the record because the Alabama court failed to make a finding of residency or jurisdiction in the decree even though Dexheimer's paper had placed residency in issue;
>
> (2) the fact petitioner's deposition was not sworn to and her purported deposition was not taken in open court, so that there was absolutely no evidence to support a decree of divorce;
>
> (3) the false allegation in the complaint as to where and when the parties were married—which meant that on the face of the record the decree had "dissolved" a superfluous Alabama marriage between the petitioner and Dexheimer, but not their actual New Jersey marriage;
>
> (4) the admittedly false allegation of residency in the complaint; and
>
> (5) the admittedly false allegation in the complaint that Dexheimer abandoned petitioner's bed and board in the State of Alabama.

Second, the Circuit Court held, in any event, that under the Alabama rule of *Hartigan* v. *Hartigan*, 272 Ala. 67, 128 So.2d 725 (1961), *both* the Dexheimer and Devine decrees must be treated as "void on their face" because petitioner's admissions and the testimony of petitioner, Dexheimer, and Devine in the Wisconsin court conclusively established that neither petitioner, Dexheimer, nor Devine had ever been residents of Alabama (App. 11-12; App. 25-26, Conclusions of Law 6 and 7).

Third, the Circuit Court held that, whatever the validity of the decrees in Alabama, the Wisconsin courts were not required

to give the decrees full faith and credit. The Circuit Court found as a fact that neither Devine nor Dexheimer had participated in the Alabama proceedings or had been personally served in Alabama and concluded that such *ex parte* decrees are not, under the decisions of this Court, entitled to full faith and credit (App. 25, Conclusions of Law 3 and 4; *see* App. 8-11). The court further recognized that to give *res judicata* effect to the Dexheimer decree's nonfinding of jurisdiction would have made a mockery of the concept of *res judicata*, for domicile had been placed at issue in that proceeding, but never litigated or adjudicated (*See* App. 13; App. 25).

The Wisconsin Court of Appeals affirmed the Circuit Court's decision in an unpublished opinion. The Wisconsin Supreme Court denied further review.

Contrary to petitioner's suggestion (Pet. p. 7), the Wisconsin courts' decision does not and could not affect the legitimacy of her children, all of whom are adults. In any event, such a decision could not affect the legitimacy of any children because statutes are in effect in each of the states with a possible interest in this proceeding—and elsewhere—that declare that children from marriages that are annulled are *legitimate. See, e.g.*, Wis. Stat. §245.36 (1976); New Jersey Stat. Ann. 9:i5-2 (1976); Ill. Rev. Stat., ch. 40, §303 (1979); Uniform Marriage and Divorce Act, §208(d) (National Conference of Commissioners on Uniform State Laws, 1973).

REASONS FOR DENYING THE PETITION

This case does not present any federal questions of national importance. First, the two Alabama decrees are nullities under Alabama law, and Alabama law gives a spouse standing to challenge such decrees in annulment proceedings. Because the Full Faith and Credit Clause does not require Wisconsin to give a

divorce decree any greater effect than it would have in Alabama, the decision below is thus supported by an independent and adequate state ground. Second, in any event, the Wisconsin courts' conclusion that the Alabama decrees are *ex parte* decrees that any state may challenge merely represents the application of established criteria under the Full Faith and Credit Clause to the unique facts of this case. The Petition is challenging the factual findings of the Wisconsin courts, not raising any important questions of law.

I. The Judgment Of Annulment Is A Correct Application Of Alabama Law.

Despite the contrary suggestion in the Petition (pp. 7-12), it is well settled that the State of Wisconsin can only be required to give the Alabama decrees "the same credit, validity, and effect" which they have in Alabama, *see Williams* v. *North Carolina*, 317 U.S. 287, 293-94 (1942), and that a Wisconsin court is free to reexamine any divorce that can "be attacked for lack of jurisdiction by parties actually before the Court or strangers in the rendering state." *Johnson* v. *Muelberger*, 340 U.S. 581, 589 (1951). The decisive considerations here are that the Dexheimer decree and the Devine decree are both nullities under Alabama law and that Alabama law gives a spouse standing to raise the invalidity of his or her spouse's prior divorce in an annulment proceeding.

A. The Decrees Are Nullities Under Alabama Law.

There are two related circumstances in which Alabama divorce decrees are held to be invalid under Alabama law and subject to collateral attack. Both are present here. First, it is the law in Alabama that when a divorce judgment is void "on the face of its own record," the decree "is a nullity, and [a] court, on motion of a stranger, may purge the records of the court of such void and impertinent matters." *Aiello* v. *Aiello*, 272 Ala. 505, 508, 133 So.2d 18, 20 (1961); *accord*, *Yerger* v. *Cox*, 281 Ala. 1, 5, 198

So.2d 282, 286 (1967); *Weisner* v. *Weisner*, 282 Ala. 626, 627, 213 So.2d 685, 686 (1968); *see Hartigan* v. *Hartigan*, 272 Ala. 67, 72, 128 So.2d 725, 729 (1961) (and cases cited). Here, the Wisconsin court held, for the reasons already stated, that the putative Dexheimer divorce decree was void on the face of the record (App. 25, Conclusions of Law 5).

Second, the Alabama Supreme Court has consistently held, in a line of cases beginning with *Hartigan* v. *Hartigan*, 272 Ala. 67, 128 So.2d 725 (1961), that where both parties to a prior decree admit facts which show the decree is invalid for lack of jurisdiction, then "the case is similar to one wherein the judgment is void on its face," and the decree is therefore "subject to collateral attack." 272 Ala. at 73; 128 So.2d at 730; *see also Shapiro* v. *Shapiro*, 280 Ala. 115, 118, 190 So.2d 548, 550 (1966); *Weisner* v. *Weisner*, 282 Ala. 626, 628, 213 So.2d 685, 686 (1968).[7] Indeed, the court in *Hartigan* v. *Hartigan* explicitly held that such Alabama divorce decrees are "void for want of jurisdiction of the subject matter in Alabama," and "*not entitled to full faith and credit in other jurisdictions.*" 272 Ala. at 75, 128 So.2d at 733 (emphasis added). Thus, in the cases in which parties to an Alabama divorce have admitted, in proceedings in other states, that they were never residents of Alabama, the courts have applied *Hartigan* and denied the Alabama decrees full faith and credit. *See McLean* v. *Grabowski*, 99 N.J. Su. 209, 239 A.2d 35 (1968); *Donnell* v. *Howell*, 257 N.C. 175, 125 S.E.2d 448 (1962). Because Devine, Dexheimer, and petitioner all testified that they had never been Alabama residents and that the Alabama courts had never had jurisdiction, the Wisconsin court held, in accordance with all the reported decisions, that both the Devine decree and the Dexheimer decree were void under Alabama law and not entitled to full faith and credit (App. 25-26, Conclusions of Law 6 and 7).

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[7]Contrary to the Petition's implication (p. 13), *Weisner* expressly reaffirmed *Hartigan*. *See* 282 Ala. at 628; 213 So.2d at 686.

B. Respondent Wrigley Has Standing To Raise The Invalidity Of The Decrees In A Suit For An Annulment.

Contrary to petitioner's argument (pp. 13-14), a spouse has "standing" under Alabama law to raise the invalidity of a wife or husband's prior divorce decrees in an annulment action. Petitioner has misconceived both the law of Alabama and the Wisconsin courts' holding.

The Alabama Supreme Court has consistently held that the validity of a spouse's prior divorce may be raised collaterally in an action for annulment. *Smith* v. *Smith*, 247 Ala. 213, 23 So.2d 605 (1945); *Aiello* v. *Aiello*, 272 Ala. 505, 510-512, 133 So.2d 18, 22-24 (1961); *see Yerger* v. *Cox*, 281 Ala. 1, 198 So.2d 282 (1967). Under Alabama law a husband has a right to an annulment where, as here, his wife's earlier divorce is void, and where, as here, the second husband was unaware of the fraud perpetrated on the Alabama court and acted with due diligence. *Aiello* v. *Aiello* makes this explicit. There, Mr. Aiello had brought an action (1) to set aside Mrs. Aiello's prior quickie divorce and (2) to annul his marriage to her on the ground she had not been free to marry him because of the invalidity of the divorce. Although the court held that Mr. Aiello had no right to set aside the *decree*, *see* 272 Ala. at 510-511, 133 So.2d at 21-22; *accord*, *Yerger* v. *Cox*, 281 Ala. 1, 198 So.2d 282 (1967); *Weisner* v. *Weisner*, 282 Ala. 626, 213 So.2d 685 (1968), the court squarely held in *Aiello* that the *marriage* would be *annulled* if Mr. Aiello could prove due diligence in bringing suit. *Aiello*, *supra*, 272 Ala. at 510-512, 133 So.2d at 22-24.[8]

[8]The law of Alabama, in short, gives persons like William Wrigley a legal right to annul a marriage if his spouse's prior divorce is void. Although petitioner has not challenged this doctrine of Alabama law, there is no substance whatever to her implication (pp. 13-14 n. 5) that this doctrine of Alabama law does not protect substantial interests. Quite apart from the State's interest in preventing fraud, the fact is that if the void character of a prior divorce could not be raised in an annulment

(Footnote continued on following page)

Indeed, because the law of Alabama is so clear on this point, every state court that has entertained an annulment action based on the invalidity of an Alabama divorce decree has agreed with the Wisconsin court and held that the spouse's prior divorce may then be challenged collaterally. *See, e.g., Gerard* v. *Distefano*, 84 N.J. Su. 396, 202 A.2d 220 (1964);[9] *Cole* v. *Cole*, 221 Ga. 171, 143 S.E.2d 637 (1965); *Parish* v. *Parish*, 50 Misc. 2d 827, 271 N.Y.S.2d 792 (1966).[10]

The Petition's argument (p. 13) that respondent Wrigley lacks standing under Alabama law to seek to set aside the *prior divorce decrees* misses the point. Respondent did not attempt to

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(Footnote continued from preceding page)

action, persons like respondent would be in the wholly untenable position in which his wife and her former husband could void the earlier divorce (and hence respondent's marriage) by both admitting in open court that there had been no jurisdiction to enter the earlier decree. *See Hartigan* v. *Hartigan, supra.*

[9]The New Jersey court's description of Alabama law (84 N.J. Su. at 402-403, 202 A.2d at 224) in *Gerard* is illustrative:

> "Under Alabama decisional law, collateral attack by a stranger to the proceedings is permitted. The Alabama Supreme Court decision in the 1945 case of *Smith* v. *Smith*, 247 Ala. 213, 23 So.2d 605, explicitly held that in a husband's action for annulment, the validity of his wife's divorce from her former husband could be raised collaterally in the pleadings and by argument of plaintiff's counsel. Again, in 1961, that court permitted a collateral attack by a husband against a decree obtained by the wife against her former husband. *Aiello* v. *Aiello* , 272 Ala. 505, 133 So.2d 18."

[10]The cases from other jurisdictions cited in the Petition (p. 14) are inapposite because none involved annulment actions. *Alikonis* v. *Alikonis*, 36 Ill.App.3d 259, 343 N.E.2d 161 (1976), was an alimony modification hearing; *Kingdon* v. *Foster*, 238 Ga. 37, 230 S.E.2d 855 (1976), was an action to enjoin a widow from administering her husband's estate; *Donner* v. *Donner*, 302 So.2d 452 (D.C. App. Fla. 1974), was an action for specific performance of a contract to make a will; and *Tippin* v. *Tippin*, 148 Conn. 1, 166 A.2d 448 (1960), was an action to modify child custody. Moreover, the respondent spouse participated in each of these cases.

set aside either the Dexheimer or the Devine decree and the Wisconsin courts explicitly stated (App. 14) that its judgment of annulment had no effect on those decrees. All the Wisconsin courts held was that—as *Aiello* v. *Aiello*, *supra* and *Smith* v. *Smith*, *supra* recognize—respondent had a right to *annulment*, whether or not he had standing to have the prior *decrees* set aside. Each of petitioner's citations[11] (p. 13) present the *different* question of when a spouse has standing to *set aside* a prior decree.

Furthermore, in *Williams* v. *North Carolina*, 325 U.S. 226, 230 (1945), this Court held that a stranger to an *ex parte* divorce always has standing to challenge the decree, where, as here, the forum state permits the challenge. The trial court here found that both Alabama divorces were *ex parte*. Therefore, respondent has standing under *Williams*. *See Trager* v. *Trager*, 38 App. Div. 2d 719, 329 N.Y.S.2d 452 (1972); *Jackson* v. *Jackson*, 274 App. Div. 43, 79 N.Y.S.2d 736 (1948).

II. The Wisconsin Courts' Decision That The Two Alabama Decrees Are *Ex Parte* Decrees And Not Entitled To Full Faith And Credit Is A Correct Application Of Established Federal Standards.

Second, even if the invalidity of the Alabama decrees could not be raised collaterally under Alabama law, the Wisconsin courts' decision is a correct application of this Court's decisions under the Full Faith and Credit Clause to unique facts. Because petitioner's challenge is based on her disagreement with the

[11]Petitioner cites *Weisner* v. *Weisner*, 282 Ala. 626, 213 So.2d 685 (1968) (involving a direct challenge to a decree, *not* an annulment of a subsequent marriage); *Yerger* v. *Cox*, 281 Ala. 1, 198 So.2d 282 (1967) (same), and those pages from *Aiello* (272 Ala. at 510-511; 133 So.2d at 22) that dealt with standing to set aside a decree. These citations therefore do not support petitioner's position. Furthermore, because each recognizes that, under Alabama law, *anyone* has standing to set aside a decree where, as here, the decree is void on its face, *see Weisner*, 282 Ala. at 627, 213 So.2d at 686; *Yerger*, 281 Ala. at 5, 198 So.2d at 286, petitioner's authorities are further evidence that the Wisconsin courts' decision is correct.

Wisconsin courts' factual findings, there is no reason or basis for reviewing the Wisconsin courts' conclusion.

Under the Full Faith and Credit Clause, this Court has held there is a distinction between "bilateral decrees," where both spouses participated in traditional adversary proceedings, and "*ex parte* decrees" where the defendant spouse neither participated in such proceedings nor was personally served with process in the state that rendered the decree. A bilateral decree is generally entitled to be given the same full faith and credit as it is given in the rendering state, *see Johnson* v. *Muelburger*, 340 U.S. 581 (1951); *Coe* v. *Coe*, 334 U.S. 378 (1948); *Sherrer* v. *Sherrer*, 334 U.S. 343 (1948). However, because it would be "intolerable" to permit one court's "finding" of domicile to "foreclose all states" from protecting their social interests when no traditional adversary proceedings have occurred, it is well settled that *ex parte* decrees may be collaterally attacked if the rendering state is found to have lacked subject matter jurisdiction because neither party was in fact domiciled there. *Williams* v. *North Carolina*, 325 U.S. 226, 232 (1945); *accord*, *Rice* v. *Rice*, 336 U.S. 674 (1949).

The trial court concluded that the two Alabama decrees were *ex parte* decrees because it found as a fact that neither Dexheimer nor Devine appeared or participated in either proceeding, but merely signed a purported waiver in advance of the filing of the complaint. The Wisconsin courts further relied on the fact that the Alabama decrees were known to be a sham by petitioner and that, particularly because the St. Clair County judge signed whatever decrees petitioner's two lawyers prepared and did not conduct hearings or inquire into domicile, the Alabama proceedings bore no resemblance to traditional judicial proceedings.

The principal basis for the petitioner's claim that the Federal Constitution required Wisconsin to honor both Alabama decrees is that she disagrees with the Wisconsin courts' findings that neither Devine nor Dexheimer participated in traditional adver-

sarial proceedings in Alabama. She repeatedly asserts (*see, e.g.*, Petition, Questions Presented and pp. 3-4) that Devine and Dexheimer filed papers in Alabama, that Devine was represented by an attorney in Alabama, and that both thus "appeared" and "participated" in traditional bilateral proceedings. Quite apart from the fact the trial court's contrary findings were compelled by the uncontroverted evidence, there is no reason for this Court to review a state court's findings of fact.

Petitioner also argues (p. 10) that the Wisconsin court was required to give the Alabama decrees full faith and credit because both Devine and Dexheimer had notice of the proceedings before they were filed and thus had every opportunity to litigate domicile in traditional adversarial proceedings. This argument is flatly inconsistent with *Williams* v. *North Carolina*, 325 U.S. 226 (1945) and *Rice* v. *Rice*, 336 U.S. 674 (1949). *Williams*, for example, involved a divorce decree that had been entered in Nevada after a defendant spouse had been personally served with process in North Carolina, but had not appeared or participated. There, the defendant spouses had undeniably had "notice of the proceedings and an *opportunity* to be heard," *see* Petition, p. 10 (emphasis in original). However, this Court nonetheless held that the Nevada decrees were not entitled to full faith and credit and that North Carolina could constitutionally apply its bigamy laws to the Nevada plaintiffs who had remarried. Because the Full Faith and Credit Clause constitutionalizes the doctrine of *res judicata* and because it affects the power of states to vindicate their fundamental interests, this Court reasoned that the Clause should not apply unless there has been an actual adjudication in traditional judicial proceedings in which both parties participate or in which the defendant spouse is served in the rendering state. The mere consent of the parties to the foreign state's jurisdiction is not sufficient to bar a state like North Carolina or Wisconsin from applying its domestic relations laws to its residents. Accordingly, every court that has considered the issue has agreed with Wisconsin and

held that purported waivers in anticipation of litigation are not "participation" which renders a divorce bilateral. *See Guerieri* v. *Guerieri*, 75 N.J. Su. 541, 183 A.2d 499 (1962); *Gherardi De Parata* v. *Gherardi De Parata*, 179 A.2d 723 (Mun. Ct. App. D.C. 1962); *Pelle* v. *Pelle*, 229 Md. 160, 182 A.2d 37 (1962).[12]

And no court has even suggested, much less held, that the Federal Constitution requires that full faith and credit be afforded "judgments," like the Devine and Dexheimer decrees, which are shams that were entered by divorce mills in "proceedings" that do not remotely resemble traditional adjudicatory proceedings, and which the party defending the judgment *knew* was a sham *before* she obtained it. Such decrees are simply not the product of a "judicial proceeding" within the meaning of Article IV of the Constitution.

Petitioner's reliance (pp. 9-10) on *Cook* v. *Cook*, 342 U.S. 126 (1951), is misplaced. Contrary to her argument, this Court did not there require the Vermont court to give full faith and credit to the Florida divorce decree. *Cook* held only that, *in the absence of evidence to the contrary*, it is presumed that the respondent spouse participated in judicial proceedings in the foreign tribunal. This is a *rebuttable* presumption, and this Court there remanded the case and held that if it were established on remand that "the defendant spouse had neither appeared nor been served in Florida," the Vermont court could deny the decree full faith and credit. 342 U.S. at 128. Here, the trial court found that this presumption had been "overcome by the clear evidence in the case" (App. 11).

[12]There is no substance to petitioner's suggestion (p. 11) that *Williams* v. *North Carolina* and its progeny were overruled *sub silento* in *D. H. Overmyer Co.* v. *Frick Co.*, 405 U.S. 174 (1972). *Overmyer* is not a Full Faith and Credit Clause case. It did not hold that parties may, by a purely private agreement, confer *subject matter* jurisdiction on a court of a foreign state and deny the right of the State of the parties' residence to apply its laws where, as here, there was no adjudication and the foreign state concededly lacked jurisdiction.

Finally, to apply full faith and credit to the Dexheimer decree would stand the clause and the corollary doctrine of *res judicata* on its head, even under petitioner's theory. Dexheimer did *not* consent to Alabama jurisdiction. The paper he executed before the suit was filed *denied* the Alabama court's jurisdiction and demanded strict proof. However, no testimony was taken; no hearing occurred; no "strict proof" was submitted, and the decree does not adjudicate the jurisdictional fact of domicile. No litigation having occurred, there is no basis for holding the decree is entitled to *res judicata* effect. For all the reasons stated, established principles and judicial integrity require that this decree and the Devine decree be treated as the shams they are.

CONCLUSION

The Wisconsin courts' decision represents an application of Alabama law and established federal principles to the particular facts of this case. The legal principles applied by the Wisconsin courts are consistent with every other reported decision that has considered the questions of federal law and Alabama law that are raised. Moreover, the facts of this case are *sui generis*: there is no other reported decision in which a litigant obtained one divorce decree and then, with knowledge it was a sham and invalid, obtained a second such decree. For the reasons stated, the Petition should be denied.

Respectfully submitted,

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No. 80-1948

In the Supreme Court of the United States

OCTOBER TERM, 1980

JOAN FISCHER WRIGLEY,

Petitioner,

vs.

WILLIAM WRIGLEY,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE WISCONSIN COURT OF APPEALS

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE WISCONSIN COURT OF APPEALS

INTRODUCTION

In her petition for certiorari, Mrs. Wrigley has argued that the decision of the Wisconsin Court of Appeals should be reviewed because it is in direct conflict with this Court's holdings in *Cook* v. *Cook*, 342 U.S. 126 (1951) and *Johnson* v. *Muelberger*, 340 U.S. 581 (1951). The Wisconsin annulment judgment merits review by this Court not only because it affects Joan Wrigley, who lived as William's wife for some six and one-half years, but also because it represents an erosion of certain fundamental safeguards provided by the full faith and credit clause of the Constitution.

If a state court is free to disregard clearly established guidelines concerning collateral review as set forth by our highest Court, the intricate and time-honored fiber of our federal system is jeopardized. Particularly in the area of domestic relations law, which constitutes many citizens' sole involvement with our judicial processes, it is critically important that the finality of state court rulings be predictable and uniform. Only in certain narrow circumstances, as defined by this Court, may a state refuse to honor the decrees of a sister state. Nothing in Mr. Wrigley's brief establishes that such circumstances were present in this case. Nothing in his brief refutes the fact that the Wisconsin Courts have crossed permissible bounds in annulling the Wrigley marriage.

William Wrigley has attempted to circumvent this Court's decisions in *Cook* and *Johnson* by casting Mrs. Wrigley's objection to the judgment of the Wisconsin court as either: (1) a dispute over factual issues resolved adversely to her on the question whether she and her first two husbands "appeared" in the two Alabama divorce proceedings; or (2) a dispute over the correct interpretation to be given to Alabama case law. Mr. Wrigley's arguments, however, fail to recognize that whether a party "appeared" in an earlier proceeding is a legal question, not a factual one. He also fails to acknowledge that the Wisconsin Court of Appeals did not base its decision on an application of Alabama law. Indeed, the Court of Appeals failed to cite a single Alabama decision.

ARGUMENT

I. THE PETITION ASKS THE COURT TO REVIEW A PURELY LEGAL ISSUE, NOT A FACTUAL ONE.

In *Cook*, this Court ruled that if both spouses appear either generally or specially in a divorce proceeding, the resulting decree is entitled to full faith and credit. *Cook* v. *Cook*, *supra* at 128. As evidenced by the certified copies

of the Alabama judgments submitted by Mrs. Wrigley in Wisconsin, both Devine and Dexheimer entered general appearances in the Alabama proceedings (App. 46-47; 55-56); they "appeared" and the resulting decrees are therefore entitled to full faith and credit.

Mr. Wrigley attempts to circumvent the holding of *Cook* by arguing that whether a party "appeared" in the prior proceeding is a factual question that may be relitigated in a later collateral attack. He argues that because the Wisconsin court "*found as fact* that neither Dexheimer nor Devine appeared or participated in either proceeding" the decrees are not entitled to recognition in Wisconsin. (Resp. Br. at 14, emphasis added.)

Mr. Wrigley misinterprets the language used by this Court in *Cook* and other cases. *See, e.g., Johnson* v. *Muelberger,* 340 U.S. 581, 587 (1951); *Sherrer* v. *Sherrer,* 334 U.S. 343, 355-56 (1948); *Coe* v. *Coe,* 334 U.S. 378, 384 (1948). Those cases do not hold that the issue whether a party "appeared" in a proceeding is a factual question to be decided by determining whether the party physically took a responsive pleading to the clerk's office and filed it. Nor do they hold that an "appearance" requires the party to be physically present at the courthouse during the proceedings. (See Resp. Br. at 2, 4.) *Cook* v. *Cook,* 342 U.S. 126, 127-28 (1951); *Johnson* v. *Muelberger,* 340 U.S. 581, 582 (1951); *Hartenstein* v. *Hartenstein,* 18 Wis. 2d 505, n.2, 118 N.W.2d 881, 885 n.2 (1963).* Rather, those cases make clear that the question whether a party "appeared" for purposes of due process is a legal one. The judgment of the Wisconsin court cannot be insulated from review

* The foonote in *Hartenstein* explains that an examination of the official transcript in *Johnson* v. *Muelberger* disclosed that the defendant spouse in that case did not appear physically, but only by counsel.

because it attempted to cast a finding of fact as a legal conclusion.

Secondly, Mr. Wrigley attempts to argue that the two Alabama decrees were entered *ex parte* because they were not entered after "traditional adversary proceedings." (Resp. Br. at 14-16.) Whatever "traditional adversary proceedings" may be, this Court has never established a minimum level of adversial activity that must be achieved in order to render a decree bilateral and entitled to full faith and credit. Legal proceedings are frequently simply an avenue for changing legal relationships; they need not always be contentious. *See, e.g.,* Uniform Marriage and Divorce Act § 303 (providing for "no-fault" divorce).

Devine and Dexheimer physically executed the responsive pleadings filed on their behalf in the Alabama proceedings (App. 19, Finding 12, App. 21, Finding 27), and did so knowingly and voluntarily. These facts are uncontroverted. Both men appeared in the proceedings by filing their general appearances and submitting themselves to the court's jurisdiction. (App. 46-47, 55-56.) They are bound, as a matter of law, by the judgments subsequently entered, and they are precluded from attacking those judgments now, just as Mr. Wrigley is.

Finally, under the guise of restating the facts of the case, Mr. Wrigley attempts to support the Wisconsin judgment by making allegations of judicial misconduct on the part of the judge who granted the Dexheimer decree. (Resp. Br. at 5-6.) At the annulment trial, Mr. Wrigley introduced evidence that F. O. Whitten, the judge who granted the Dexheimer decree in 1966, was convicted of mail fraud in 1970 for issuing blank divorce decrees. Mr. Wrigley, however, adduced no evidence that the Dexheimer decree was one of those issued in blank. Indeed, the trial

court specifically found that "the evidence does not sustain the charge that the Dexheimer decree was one of these issued in blank to attorneys by Judge Whitten."* (App. 6.)

Contrary to the implications in Mr. Wrigley's brief, no evidence was adduced at trial that either of Mrs. Wrigley's prior divorce decrees was fraudulently obtained. The "evidence" set forth in Mr. Wrigley's statement of the case (Resp. Br. at 5), therefore, is absolutely irrelevant to the issues before this Court and should be disregarded.

II. THE DEVINE AND DEXHEIMER DECREES ARE NOT VOID UNDER ALABAMA LAW.

Apparently Mr. Wrigley recognizes that the ruling of the Wisconsin Court of Appeals that the decrees were entered *ex parte* is not a defensible basis for upholding the annulment decree, because he attempts to rely on a rationale not used by the Wisconsin Court of Appeals. He argues that the decrees are void under Alabama law, and therefore not entitled to faith and credit in Wisconsin. (Resp. Br. at 9-10.) Mr. Wrigley, however, fails to acknowledge that the Wisconsin Court of Appeals did not base its decision on Alabama law, and failed to cite a single Alabama case. Moreover, it is clear that the Devine and Dexheimer decrees are not void under Alabama law. *See, e.g., Aiello* v. *Aiello,* 272 Ala. 505, 510, 133 So. 2d 18, 21 (1961) (insufficiency of evidence to support a decree does not make decree void on its face).

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* Moreover, Judge Whitten was convicted for selling blank decrees to an attorney named John Ike Griffith. Griffith was not connected in any way to the Dexheimer proceedings. (App. 5-6.)

Mr. Wrigley attempts to rely on *Hartigan* v. *Hartigan*, 272 Ala. 67, 128 So. 2d 725 (1961), to support his argument that the Devine and Dexheimer decrees are void under Alabama law. (Resp. Br. at 10.) The unique facts of *Hartigan*, however, have no application to the facts of this case.* Moreover, subsequent Alabama decisions have conclusively put to rest any expansive reading of *Hartigan*. *See Weisner* v. *Weisner*, 282 Ala. 626, 628, 213 So. 2d 685, 686 (1968); *Multer* v. *Multer*, 280 Ala. 458, 462, 195 So. 2d 105, 108 (1966); *Shapiro* v. *Shapiro*, 280 Ala. 115, 117-18, 190 So. 2d 548, 549-50 (1966); *Aiello* v. *Aiello*, 272 Ala. 505, 509-10, 133 So. 2d 18, 21 (1961); *see also Yerger* v. *Cox*, 281 Ala. 1, 198 So. 2d 282 (1967).

Unsurprisingly, every court that has considered the validity of an Alabama divorce decree since *Weisner* and *Yerger* has upheld its validity. *See Donner* v. *Donner*, 302 So. 2d 452 (Fla. App. 1974) *cert. denied*, 314 So.2d 151 (Fla. 1975); *Kingdon* v. *Foster*, 238 Ga. 37, 230 S.E.2d 855 (1976), *cert. denied*, 431 U.S. 916 (1977); *Alikonis* v. *Alikonis*, 36 Ill. App. 3d 159, 343 N.E.2d 161 (4th Dist. 1976); *see also Tippin* v. *Tippin*, 148 Conn. 1, 166 A.2d 448 (1960).

Mr. Wrigley attempts to distinguish these cases by noting that they were not annulment actions. (Resp. Br. at 12 n.10.) Both he and the trial court attempted to distinguish between decisions that "set aside" a prior divorce decree and those that merely "annul" a marriage.

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* Unlike the Hartigans, neither Devine, nor Dexheimer, nor Mrs. Wrigley has ever returned to the very Alabama court that granted their divorce decrees with statements that their own testimony was false, while simultaneously asking the court for affirmative relief from the judgment. Unlike the Hartigans, neither Devine nor Dexheimer appeared as parties before the Wisconsin court. Even Mrs. Wrigley was not there by choice; rather she was there as a defendant sued by her husband for an annulment.

(App. 14; Resp. Br. at 12-13.) None of the decisions cited above, however, purported to make any such distinction; nor can one be made.

Incredibly, respondent asserts that the Wisconsin judgment "had no effect on [the Devine and Dexheimer] decrees." (Resp. Br. at 13.) Mr. Wrigley appears to have the same limited view of the extraterritorial effect of the judgment of the Wisconsin court as he does of the judgments of the Alabama courts. The effect of the Wisconsin judgment cannot be limited to the geographical boundaries of that State. Unless reversed by this Court, the Wisconsin judgment is entitled to full faith and credit in every state of the Union. As Mr. Wrigley points out in his brief, Wisconsin law provides for an annulment when a wife remarries despite the fact that she has a prior husband living from whom she is not divorced. Wis. Stat. § 247.02(3) (1976). (Resp. Br. at 6.) The Wisconsin trial court annulled the Wrigley marriage on that basis, finding that Mrs. Wrigley had an undivorved spouse living at the time of her marriage to William Wrigley. (App. 16.) Unless this Court reverses, the Wisconsin judgment is *res judicata* and Mrs. Wrigley is collaterally estopped to deny the necessary factual bases upon which the decree is founded. If the judgment stands, it will nullify the effect of the Alabama decrees and Mrs. Wrigley will be considered legally married, presumably to Devine.

CONCLUSION

The issues raised by the Wisconsin court's annulment decree touch more than just the parties before the Court. Given the mobility of our society and the increasing number of persons who end their marriages with uncontested divorces and eventually remarry, it will become more and more common for state courts to pass upon the validity of divorce decrees rendered by sister states. This process must be conducted within the firmest boundaries, applying the strictest standards.

For all the reasons and authorities cited above, petitioner Joan Fisher Wrigley respectfully requests that this Court grant the writ of certiorari and reverse the decision of the Wisconsin Court of Appeals.

Respectfully submitted,

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